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COMMITTEE PRINT

BUSINESS MEETINGS
ON
U.S. GRAIN STANDARDS ACT OF 1976

H.R. 12572

October 30 and 31, November 4, 7, 10, 11, 13, 17, and 18, December 2, 9, and 10, 1975, February 19 (GAO Briefing), 24, 25, and 26, March 2, 3, 4, 9, 10, and 17, 1976

Public Law 94-582

COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
SECOND SESSION



DECEMBER 1976



Printed for the use of the Committee on Agriculture

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U.S. GOVERNMENT PRINTING OFFICE

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U.S. GRAIN STANDARDS ACT OF 1976

THURSDAY, OCTOBER 30, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:25 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Mathis, Bergland, Bowen, Rose, Litton, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Hightower, Bedell, McHugh, English, Fithian, D'Amours, Sebelius, Findley, Thone, Symms, Madigan, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Steve Allen, staff consultant; Eugene Moos, staff analyst; Glenda Temple and Mary Jarratt, staff assistants.

The CHAIRMAN. The Chair anticipates that this legislation which is before the full committee will require several days for markup.

Accordingly, I have written a letter to the Speaker and the chairman of the Rules Committee asking that once we complete action on the bill, it be considered by the Rules Committee, notwithstanding the deadline of November 3.

I have not yet had a response, naturally, since it has just been delivered. It is not my intention to attempt to complete consideration of this bill by tomorrow, considering the complexity of the issues involved.

I think we will have to give careful attention to the many complex issues.

The Chair also wanted to suggest a method of approaching this legislation. We have a number of bills before us, although the calendar lists only Senate Joint Resolution 88 and H.R. 9467.

Exactly how many bills have been referred to this committee, Counsel?

Mr. BOR. Nine.

The CHAIRMAN. These nine bills represent a number of different legislative approaches to the situation.

The Department of Agriculture has recommended, by communication with the committee, the bill which Mr. Wampler and I introduced at its request. That bill retains private inspection while increasing Federal supervision and adding new, very much tightened conflict of interest rules. The legislation introduced by Mr. Mezvinsky provides for Federal inspection at all inspection points in the United States, while Mr. Smith's bill provides for State and Federal inspection.

There are other approaches still.

The Senate, for example, has adopted Senate Joint Resolution 88, which is a specific interim proposal expiring in 1 year. During this time the Senate intends to consider the investigations which are being conducted by the GAO and by the Senate committee before working on a more permanent legislation.

What the Chair suggests is, that with all these various approaches implemented in nine different pieces of legislation, it might prove better for the committee to first decide which particular policy or course of action it should take and then, having made that decision, request the staff to present a committee print embodying these decisions for markup.

After that process has been completed, the committee would proceed with the introduction of a clean bill reflecting the committee's judgment. That bill would be brought back to the committee for final action before being reported.

The Chair would like at this time to ask the members of the committee for their comments and suggestions with respect to this approach.

Mr. Bergland?

Mr. BERGLAND. Mr. Chairman, I think that the more logical way of approaching this matter would be to consider Senate Joint Resolution 88, which is a 1-year proposition. It is not a cosmetic bill. It deals with many of the areas which have proven to be defective in the grain inspection field.

The chairman of the House and Senate committees on the 24th of June of this year requested the GAO audit of this entire area. The GAO has commissioned 41 inspectors and they are obliged to report back their findings before February 15.

The chairman of the Senate committee has requested the cooperation of the FBI in the investigation. The Senate has commissioned a staff of investigators of their own inquiring into the irregularities, not only at export points, but at certain interior points around the United States.

To make a long story short, Mr. Chairman, this is a massive and sophisticated study. It is the first of its kind, I think, in the many years of existence of these grain standards.

I believe, Mr. Chairman, that it would be more appropriate if we were to take the Senate joint resolution, which is a 1-year authority, to the Secretary to do certain things that he is not now authorized to do, and await consideration of the permanent change in law pending the outcome of these reports that are due in the middle part of February.

This committee could benefit from the results of those investigations from the GAO and others.

I think it would better prepare us to consider the complicated questions which are before us in the nine bills which have been referred to this committee.

Senate Joint Resolution 88 is a rather complicated proposition, and I think if we decide to go that route, then we should prepare to take some time to consider the bill section by section. There are some provisions within that bill with which I am in disagreement.

I would suggest, Mr. Chairman, that this be considered as the course of action. I do not intend to offer a motion at this time.

The CHAIRMAN. Mr. Wampler.

Mr. WAMPLER. I would say briefly, Mr. Chairman, that if we take Senate Joint Resolution 88 as the legislative vehicle, then my mind is still open as to what course of action we should take.

Pending the receipt of the report of the investigation by the GAO and the Senate Committee on Agriculture and Forestry, and any information that we might develop, passing Senate Joint Resolution 88 might help bridge the gap until such time as we could go into greater detail.

I favor the continuation of the present system of federally licensed private and State inspectors.

I do oppose the complete federalization of the system.

This would be a good legislative vehicle.

Like the gentleman from Minnesota, I have some reservations about Senate Joint Resolution 88, but I think it would help.

The CHAIRMAN. Will the gentleman yield?

Mr. WAMPLER. Yes.

The CHAIRMAN. When I made the original statement, I was suggesting that, rather than proceeding with a markup of one bill, we first decide, as a policy matter, how the committee wants to proceed from a conceptual standpoint.

That would include deciding whether the committee wanted to move with permanent legislation or with something of a more temporary nature.

All I am suggesting is that I feel some very broad decision must be made before we take up one bill or another.

Probably the first question is: Does the committee wish to postpone considering more permanent legislation until the results of the investigations are in or does it prefer to proceed now with the markup of something more permanent. Based on that judgment, we could then either take up Senate Joint Resolution 88 or one of the other bills and proceed accordingly.

The Chair would like to point out to members certain facts which should be considered before the committee reaches any decisions. First, the Senate probably will postpone acting on permanent legislation until the investigations have been completed.

This belief is reinforced by their action on Senate Joint Resolution 88.

If we were to pursue the markup of permanent legislation, we could be faced with a parliamentary situation in which the Senate might decline to go to conference until the results of the investigations have been received.

Of course we could still pass a permanent bill but it would probably not result in final action until sometime next spring when the investigations are expected to be concluded.

On the other hand, the Department, in its communications with the committee, has been critical of some of the provisions in Senate Joint Resolution 88 and has indicated that 1 year's time does not provide the sufficient opportunity to institute certain changes in inspection which that bill calls for. It insists that they need more permanent authority before they can administer effectively such changes.

Without objection, Mr. Moss, would you read the Department's letter to the committee? I do not know whether you have copies available or not.

Mr. Moos. Mr. Chairman, we do not have enough copies available for the members of the committee. Do you want me to read the letter in its entirety?

The CHAIRMAN. Yes.

Mr. Moos. I might point out that this has not been cleared yet by OMB, nor has it been signed. Does that make any difference?

The CHAIRMAN. I will read it.

This responds to a request from your staff for our comments on Senate Joint Resolution 88, the Emergency Grain Standards Amendments of 1975, as passed by the Senate September 25, 1975.

This Department does not favor enactment of Senate Joint Resolution 88. We recommend in lieu thereof the enactment of H.R. 9467.

As indicated in the Department's testimony before the Senate Subcommittee on Foreign Agricultural Policy on June 19, 1975, the Department does not feel this emergency legislation is necessary.

While we recognize that immediate action must be taken to correct deficiencies and irregularities in the national grain inspection system, we strongly feel that any legislation resulting from the extension ongoing investigations, as well as the hearings of your committee, should give USDA permanent authority. Permanent authority is needed in order for the Department to establish an extensive training program for any revised system for grain inspection.

We believe it would be most difficult to recruit and train competent people on a 1-year basis to perform inspection or supervisory tasks, particularly when tenure of employment would be less than 1 year.

Senate Joint Resolution 88 would permanently amend the U.S. Grain Standards Act to include causing the issuance of false or incorrect certificates under the act by "deceptive weighing" and falsifying weights of grain shipped in interstate or foreign commerce as prohibited acts. It also gives the Secretary authority for 1 year to supervise and regulate the weighing and certification of weight of grain shipped in interstate or foreign commerce and to inspect and test all weights and scales used for such purpose.

The Secretary would be authorized to enter into cooperative agreements with the various States for administration of State procedures equivalent to those prescribed by the Secretary in lieu of enforcing the Federal provisions by Department employees.

As indicated in our testimony before your committee on September 19, 1975, we believe it is premature for any recommendations in this area at this time. The outcome of the GAO study, as well as the Department's finding and recommendations, should provide the basis for future action in this area.

Senate Joint Resolution 88 addresses itself to several of the amendments proposed by the Department in its proposed bill H.R. 9467. However, we feel that enactment of legislation providing less than permanent authority will not only subject this Department and the Congress to further criticism, but also could lead to the further continuation of the deficiencies and irregularities in our national grain inspection system.

There are several features of S.J. Res. 88 which are significantly different than H.R. 9467. These are (1) higher total costs, (2) higher level of Federal and official inspection agency employment, (3) higher total Federal costs, and (4) higher total appropriated funds.

The total cost of S.J. Res. 88 is estimated at \$49.1 million compared to \$39.3 million for H.R. 9467. This compared to \$35.7 million for the current grain inspection system. Costs for carrying out the provisions of S.J. Res. 88 relating to weighing and registration constitute almost 60 percent of the higher costs of the Senate bill.

In terms of total employment, S.J. Res. 88 will require employment of approximately 3,553 man-years, some 308 Federal employees more than H.R. 9467. The current system employs 3,069 man-years. Fifty percent of the higher employment level of S.J. Res. 88 is attributed to the weighing and registration functions.

S.J. Res. 88 Federal program costs of \$19.1 million are more than double those of H.R. 9467, which are estimated at \$9.3 million. Of the \$19.1 million S.J. Res. 88 Federal program costs, \$13.6 million are scheduled to be derived from appropriated funds compared to \$1.4 million for H.R. 9467. The current system derives \$3.1 million from appropriated funds. Conversely, 85 percent of H.R. 9467 Federal program costs will be derived from users fees compared to 29 percent for

S.J. Res. 88. This latter feature of H.R. 9467 significantly reduces dependency of the program on appropriated funding.

Further, S.J. Res. 88 contains several provisions for which means of enforcement are not provided.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program. Sincerely,

That is the Department's position on the bill as far as we know it at this time.

Mr. THONE. Who wrote that?

The CHAIRMAN. My copy is not signed, neither is the draft copy. I assume it was signed by the Secretary.

Mr. FINDLEY. Mr. Chairman, I am sure that grain inspection is being much more prudently handled today than it was 6 or 8 months ago.

The fact of the disclosures has undoubtedly tightened procedures, whether it be in the hands of Federal employees or federally licensed private inspectors.

It seems clear to me that a 1-year bill would be imprudent for several reasons. The administration has made a strong case from that standpoint. From our standpoint this would force us to do something on the eve of an election day, or go back to the prior system and let the emergency bill lapse and go back to the old arrangement.

It would be far better, I would think, for us to wait until the studies are completed with the recommendations in hand, and then deal with permanent legislation and reform.

Mr. BERGLAND. Would the gentleman yield on that point?

My problem with that is that is probably going to take until May or June of next year to adopt the permanent change in the law. If we could agree to a version of Senate Joint Resolution 88, then the Department could proceed to implement the new provisions immediately, and provide the protection which the bill affords.

It would increase the criminal penalties and other things which are badly needed now.

It would give them leadtime to proceed with the implementation of the changes which otherwise would be delayed for several months.

Mr. FINDLEY. One possible compromise would be to weed out the extraneous matter and deal only with the criminal penalties but extend them, and make a permanent change in the law.

Mr. BERGLAND. You mean the preempting or foreclosing of any change of any matter pending after we have received the reports?

Mr. FINDLEY. No, I would not think it would preclude any change.

The CHAIRMAN. I wonder if the staff would indicate which provisions of the Senate Joint Resolution 88 are permanent?

Mr. BOR. There are five different titles to Senate Joint Resolution 88. The second title is the title that provides the Agriculture Department with interim 1-year authority.

The first title is the title that deals with a change in the laws that affect criminal penalties for violations of the Grain Standards Act and for deceptive weighing. That would be permanent in nature.

The second title is the title which gives the Secretary authority for 1 year to strengthen the grain inspection system.

Also it would give him authority for 1 year to provide for designation of official inspection agencies, and set out the standards for design-

nating official inspection agencies, including in the case of private agencies, specified conflict of interest rules.

This is discretionary with the Secretary under Senate Joint Resolution 88 for a period of 1 year.

It also gives interim authority for 1 year to set out Federal standards for weighing procedures, and for the testing and inspection of scales.

That essentially is the temporary stopgap authority for 1 year.

Title III of the act calls upon the Comptroller General to conduct a study of the compliance of the predominant grain exporters with the provisions of the U.S. Grains Standards Act and gives the Comptroller General the authority to have access to books and records that are necessary to complete the study.

Some of the language regarding the study is similar to what the Comptroller General is already doing on the request that has been previously made by the chairman of this committee, and Senator Humphrey of the Senate committee.

But, in that case, the study is supposed to be completed in February, and the study that is provided here would be completed 1 year after the enactment of the bill.

Title IV of the bill provides for registration, and this is a permanent feature of the bill. It would provide for registration of persons that are engaged in grain merchandising and the handling, weighing, or transporting of grain for sale.

There are certain exceptions here, but the reason for the registration requirements is that, if it is found that any of those persons have engaged in violations of the Grain Standards Act, or certain criminal provisions, then there would be a basis for suspending or revoking the registration. In that event they could no longer engage in the business, as long as the registration had been revoked or suspended.

The last title of the bill, title V, requires the Secretary of Agriculture to make certain reports to Congress.

One is a continuing requirement regarding complaints that have been made by foreign buyers concerning grain received abroad, if the Secretary feels that there is a proper basis for the complaints. This is to be done on a quarterly basis.

Another feature of this bill would require the Secretary to conduct a study of the grain standards concerning their adequacy, and make changes that he determined necessary and appropriate to the standards, and report back to the Congress within 6 months after enactment of this bill.

Another feature is that the Secretary would conduct a study concerning the contamination and handling of agricultural products and report back within a year. Similarly, there is a requirement that he report back any legislative recommendations that he might have within every 60 days after enactment of this bill, for a 1-year period.

That is a brief summary of Senate Joint Resolution 88.

You see that in essence one title gives the Secretary a lot of additional authority, but only for 1 year. It does not require that he exercise that authority, but that it be discretionary with him.

Then there are provisions which require reports by the Comptroller General, and reports by the Secretary of Agriculture. There is a substantial change made in the criminal code regarding the violations of

the Grain Standards Act, and criminal penalties for deceptive weighing.

Finally, there is a provision for registration of grain merchandisers and others who are engaged in the business of handling and weighing grain.

The CHAIRMAN. Mr. Findley?

Mr. FINDLEY. Mr. Chairman, the only further comment I would make is that if we take up Senate Joint Resolution 88 and if we take it up with the understanding that the term could be extended to 2 or 3 years, then I think that might be all right.

I think the rules would permit that.

The CHAIRMAN. Any amendment could be offered as to Senate Joint Resolution 88. There is no limit on that.

Is there further discussion?

Mr. THONE. Very briefly, Mr. Chairman. As you and I know from the discussion that we had after our briefing session yesterday, which was sparsely attended and most of the committee meetings were also very sparsely attended, and on a very, very complex subject, I might add, this is important legislation.

I worked hard on it initially because I was interested in it for agriculture. I still feel myself very unqualified in many areas. The gentleman from Minnesota, Mr. Bergland, suggests that we go with Senate Joint Resolution 88. I took it from his remarks that he wants to remove some of what we might feel are extraneous sections, especially those in the weighing area.

That is what this ghost letter from somebody at the Department seems to hit pretty hard.

If the committee goes with Senate Joint Resolution 88, then \$14 million is added to the grain inspection system. Who is going to pay for it? It is ultimately going to come out of the producers' pockets and nowhere else.

Of course, if you go with the federalized program introduced by Mr. Mezvinsky's bill, then you are talking about \$60 million or something like that.

As Congressman Bedell knows and we just had a discussion on that feature—even on Neal Smith's bill you would add costs to the grain inspection system.

We had witnesses, and one in particular, who suggested that we were going to have all kinds of allegations here about how the inspection system in the interior reeks with fraud and that it would startle all of us. I have not seen or heard a scintilla of evidence in this committee since, in this regard.

I hear it is coming all the time. Congressman Bedell said he had people down in New Orleans, but we do not seem to have anything concrete at all. There are a lot of rumors and discussions and things like that. We need testimony on this.

The CHAIRMAN. I may not help you much in this area, but I think there is a problem with adopting certain provisions of Senate Joint Resolution 88 because they are only for a year. As you know, the 1976 appropriation bill has gone forth and, as I understand it, there are some additional resources placed in that bill for increased inspection.

Mr. THONE. Will the gentleman yield?

The CHAIRMAN. Yes.

MR. THONE. I understand the Senate will not call a conference if we go on permanent legislation. What are your thoughts on that?

The CHAIRMAN. My view, speaking personally is that there are some questionable provisions in Senate Joint Resolution 88. It increases criminal penalties, for example; but it increases them to correspond with S. 1, which completely rewrites the Federal Criminal Code.

We have no assurance at this time that the Congress will adopt those particular provisions. What we would have is one act lasting for 1 year which is not consistent with the provisions of the current Criminal Code of the United States. Under the circumstances, I personally question the wisdom of our adopting, just for the Grain Inspection Act, a theory of the revision of the Criminal Code which the Congress is working on slowly in the Judiciary Committees of both the House and Senate.

Perhaps it would be wiser to merely increase the present penalties without introducing new concepts.

MR. THONE. Mr. Chairman, we could easily change those misdemeanors to felonies. I think everybody agrees that the penalty sections of the Grain Standards Act are woefully weak.

But, it does seem to me that we are flying blind in many areas here.

Is there any way, Mr. Chairman—and I even hesitate to suggest this, but it worked out quite well last year and you participated in it—of having some sort of blue ribbon committee of five or seven, or whatever, members of this committee sit down and try to work out something here so that we would have something to go by?

I think you are going to get into much legislative confusion here without more direction.

MR. BEDELL. Will the gentleman yield?

MR. THONE. Yes; I will yield.

MR. BEDELL. I have no great argument with your statement, but I do not think it was clearly shown in the committee consideration that necessarily these other methods would be more costly.

At least it was argued in that regard, and Mr. Smith felt that his bill would not increase the cost.

Whether he was right or wrong, I am not sure.

MR. THONE. I have Mr. Smith's statement right here. He concedes that, if you adopt the Federal and State system which is the thrust of his bill, then the cost would be about \$40 million.

Sure, there is some shuffling about as to who is going to pay it, but he is saying that they are going to take it out of the private sector and totally put it in the governmental sector. This is no right or necessary.

MR. BERGLAND. Would it be in order to move that we take from the Clerk's desk Senate Joint Resolution 88 and proceed to consider that for markup?

The CHAIRMAN. That motion would be in order; yes.

MR. FINDLEY. Mr. Chairman, could I offer a substitute to the amendment.

The CHAIRMAN. The motion has not been made yet.

MR. BERGLAND. I move the committee take Senate Joint Resolution 88.

MR. THONE. Mr. Chairman, until we make some sense out of this, we do not have a quorum and I must reluctantly object to the motion

on that basis. I would like to visit with you about this. I feel strongly about this.

Mr. BERGLAND. If the gentleman would withhold his objection, I might explain briefly.

I agree with you that we have nine bills which are highly technical and complicated. We really do not know exactly what we are talking about in that we do not have the benefit of the investigation that is currently underway.

I hear the rumors about something that is going to explode soon in Illinois or Missouri or some other place. I do not know if it will or not. I think we ought to buy some time. I do think, Mr. Thone, we should move now to meet some of the problems that have arisen. I think we need the passage of a 1-year proposition.

Mr. THONE. I am not totally objecting to that.

How about a compromise then? How about moving that Senate Joint Resolution 88 be moved to a subcommittee and let the subcommittee get together again? The Senate bill was reported out, I guess, last week. I did not see it until yesterday. There are some parts of it that appeal to me; some are terrible.

Mr. BERGLAND. I do not claim Senate Joint Resolution 88 to be the gospel. There are elements with which I disagree, but I am looking for a workhorse so we can proceed and expedite the business.

The CHAIRMAN. I have a suggestion since we do not have a quorum present.

It is now 10 minutes to 12. The Chair would suggest that we adjourn the committee at this time and meet again at 10 a.m. tomorrow for the purpose of receiving the gentleman from Minnesota's motion and any substitutes or amendments thereto. At that time we could make the initial determination of how to proceed in the consideration of this matter.

If there is no objection to that procedure, in the absence of a quorum at the present time, the Committee on Agriculture will stand adjourned to meet at 10 a.m. tomorrow morning.

[Whereupon at 11:50 a.m., the committee adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

FRIDAY, OCTOBER 31, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Bergland, Brown, Bowen, Rose, Breckinridge, Nolan, Weaver, Baldus, Krebs, Hightower, Bedell, McHugh, English, Fithian, Jenrette, Wampler, Sebelius, Thone, Symms, Madigan, Jeffords, Grassley, Hagedorn, and Moore.

Also present: Robert M. Bor and Hyde H. Murray, counsels; John Hogan, associate counsel; Gene Moos, staff analyst; Steve Allen, staff consultant; Peggy Pecore, Mary Jarratt, Susan Bell, staff assistants.

Also present: Mr. David Galliard, director, Grain Division, U.S. Department of Agriculture.

The CHAIRMAN. The Committee on Agriculture will come to order.

Mr. BERGLAND. Mr. Chairman.

The CHAIRMAN. I recognize the gentleman from Minnesota.

Mr. BERGLAND. Thank you, Mr. Chairman. I make a point of order that a quorum is not present and I would urge the names of the absentees be spread upon the record.

The CHAIRMAN. The gentleman from Minnesota makes the point of order that a quorum is not present.

The Clerk will call the roll.

[The rollcall follows:]

Present: Representatives Poage, de la Garza, Jones of North Carolina, Jones of Tennessee, Bergland, Brown, Bowen, Breckinridge, Baldus, Krebs, Hightower, Bedell, McHugh, Fithian, Jenrette, Thone, Symms (by proxy), Hagedorn, Moore, Foley, Vigorito.

The CLERK. There are 21.

The CHAIRMAN. Will the Clerk please repeat the count once again.

The CLERK. There are 21.

The CHAIRMAN. The Clerk is not counting proxies, or is she?

Proxies cannot be counted for this purpose.

The CLERK. There are 20.

The CHAIRMAN. There being 20 Members present, a quorum is not present.

Mr. BEDELL. Mr. Chairman.

The CHAIRMAN. Is there a motion to adjourn because a quorum is not present?

Thank you, Mr. Bedell. The gavel has not yet fallen, so we are not adjourned.

I note the entry of Mr. Madigan. There are now 21 Members present, and this constitutes a quorum.

The Chair wishes to announce that, beginning on the fourth of November, all meetings of the committee will be called to order at the appointed time.

Under normal circumstances, this will be 10 a.m. No later than 10 minutes after the appointed time of the meeting, the Chair will recognize a member of the committee for the purpose of requesting a quorum call.

This procedure, of course, will not be required in the event that a quorum is present prior to that time.

If a quorum is not present, then the Chair will recognize any member of the committee who wishes to offer a motion to adjourn.

I hope that we can cooperate in this new procedure. The Chair is concerned that members who come at the appointed hour, members of the press, members of Government agencies, and private parties wishing to observe the committee's activities, are inconvenienced when the committee has to wait for 40 minutes to establish a quorum.

So, beginning on November 4, at 10 minutes after 10 a.m., the Chair will recognize someone for the purpose of having this quorum call.

I expect that this probably will result in a number of times when the committee will not be able to meet because of a lack of quorum.

Members who are punctual are rightfully complaining about long delays in getting down to business.

Is there any objection to that proposal? Is there any discussion of it?

Mr. BERGLAND. Mr. Chairman.

The CHAIRMAN. Mr. Bergland.

Mr. BERGLAND. Mr. Chairman. I think that it is a great idea and I would hope that this will be communicated to the absentees this morning.

I want them to understand the rule.

The CHAIRMAN. It will be sent by memorandum to all members of the committee.

At this juncture, we will resume consideration of the grain standards legislation.

The initial decisions of which bill or bills to take up and use as our main point of focus and what procedures shall be followed are our primary consideration at this time. On the one hand, there is some opinion on the committee that we should proceed with temporary legislation, Senate Joint Resolution 88.

On the other hand, there are members of the committee who feel we ought to move directly to permanent legislation, despite the fact that the Senate is determined to await the conclusion of investigations now in progress. As I mentioned, this brings the likelihood of a joint conference into doubt. Further, if we cannot assure the Rules Committee that legislation could be enacted in final form during this session of Congress, then we might have some difficulty in getting a rule or an exemption from the November 4 cutoff date.

One proposal that has been advanced is that we proceed with the markup of a permanent bill. Then, if the committee so desired, we could later extract certain provisions in the form of a temporary bill

which could be reported to the House. This might increase the likelihood of a conference with the Senate.

The advantage of this procedure is that, by taking permanent legislation through the committee, we would make clear to the industry and to the agriculture sector just exactly where this committee feels permanent changes should be made, even if they could not be implemented in a conference with the Senate.

Some of us share the concern that temporary legislation might severely disrupt the industry for a number of reasons. In the first place, there might be a great deal of reluctance to implement new procedures when a year later they may be changed completely or the private sector might be phased out altogether. Then too, we must take into consideration the fairness of having people live with such uncertainty for a year or more.

We have proposals before us to strengthen the present system while retaining private inspection, proposals for an entirely Federal system, and proposals for a mix of Federal and State inspection.

Finally, we have a bill calling for Federal or public inspection at the export ports and retaining, with increased supervision, private inspection at the inland ports.

There is, then, a great range of possible approaches which could be incorporated into permanent legislation.

So, the Chair would like to have the committee indicate whether it would be willing to go forward with the markup of permanent legislation, with the understanding that we might not proceed very much beyond the reporting of the bill by the committee in this session of Congress.

Then, we would make a judgment as to whether elements of that permanent bill or a separate temporary bill, might be framed and reported by the committee.

Mr. BERGLAND. Mr. Chairman.

The CHAIRMAN. Mr. Bergland.

Mr. BERGLAND. Thank you, Mr. Chairman. When the committee adjourned just yesterday, I moved that we take from the Clerk's desk a Senate-passed bill, Senate Joint Resolution 88, and have this bill read and be open to amendment at any point.

I think that the wisdom of the chairman has been noted by this member and others in that if we were to defer action on permanent legislation and take up a temporary bill, it could lead to considerable confusion throughout this country.

I, therefore, would urge that we proceed to mark up a permanent bill. Mr. Chairman, I do, however, believe that it would be incumbent upon us to report a bill that would be comparable to the S.J. Res. 88.

I say this because there are certain functions that need to be amended. I will give you some examples.

The hammer may fall at any moment on any port. The Justice Department may indict everybody in the grain inspecting business in any port and shut it down.

The Secretary has no authority to move in with direct inspection. I think he should have some authority, because we do not know what may happen in the ensuing days.

We do know that there have been 52 indictments to date, and 38 pleas of guilty. It is conceivable that a port could be completely closed up.

I, therefore, think that we ought to report a bill that could go to the Senate for conference to produce some authorities that are currently lacking in law.

The CHAIRMAN. Thank you, Mr. Bergland.

The Chair feels that the first question to be decided is whether the committee approves of this approach. If so, we must then decide with which of the various pending bills or concepts the committee wishes to proceed.

Mr. FITHIAN. Mr. Chairman.

The CHAIRMAN. Mr. Fithian.

Mr. FITHIAN. Thank you, Mr. Chairman. I would like to express my very strong feeling in this matter.

We have been involved in this for some time now. I have had correspondence back and forth with the White House.

I have spent a good bit of time on this and I feel quite strongly about it.

Now, we have several potential routes that we might go down. I mean this for the whole committee.

I think that, given the nature of the membership of this committee, it is going to take some time to argue out and arrive at any consensus on whether to go with a Federal inspection system, or a Federal and State inspection system, or some other alternative.

So, I think that we ought to get on with the business of thrashing out where this committee stands. We have that responsibility to the people who elected us.

I know that the GAO is going to be doing things and investigators are going to be reporting prior to additional legislation.

We can keep that in mind. If, however, we wait until that is all done, and then take up the matter and go through the long process that we are bound to get into when we try to determine among ourselves in what direction we should go, then we will inordinately delay a decision on this very important matter.

This would be very destructive of our overseas marketing situation. I think that we would do well as a committee to start the process of debate and discussion at the earliest possible moment, knowing full well that we cannot be definitive.

In any event, these philosophical arguments and discussions have to take place. It is my position that we should be doing that now. Further, I concur with the gentleman from Minnesota. I feel that if it is necessary to pull out two or three things which we can agree upon along the way because of emergency situations, then that is well and good.

But the basic discussion must take place in this committee.

The CHAIRMAN. Is there any further discussion on the approach that has been outlined?

[No response.]

The CHAIRMAN. All those Members who favor proceeding along that line, please raise your right hand.

[Show of hands.]

The CHAIRMAN. This is just a straw vote.

Are there any opposed? We will, then, follow that pattern.

It seems to me that the next question is how we proceed to resolve some of the issues dealt with in the nine different bills before us.

We could choose any one of the pending bills and begin to mark that up, or we could make some initial judgments as what type of changes the committee favors in the grain inspection area.

Once this has been determined, we could probably focus more effectively on one bill or another as a vehicle for markup.

It was always the Chair's thought that we should not report any of the bills before us currently to the floor but, rather, should either work from a committee print or, having marked up a particular bill, introduce a clean bill reflecting the committee's final judgment.

In this way, we could allow for cosponsorship from any committee members who wish this. We would then report that bill to the floor.

The question of authorship is not involved, at least as far as the Chair is concerned.

Mr. BERGLAND. Mr. Chairman.

The CHAIRMAN. Mr. Bergland.

Mr. BERGLAND. Thank you, Mr. Chairman. I have a parliamentary inquiry.

Will the rules of the committee permit the committee to consider the various matters by topic area rather than to take a bill and attempt to amend or mark up that particular vehicle itself?

The CHAIRMAN. Yes, we have done that in the past. I think that approach has worked rather effectively in areas such as this where there are philosophical and legislative concepts that are scattered over a number of bills.

In this way, when the committee's broad-outlined judgment is obtained, a committee print can be prepared to reflect that policy judgment in legislative language. Once this is done, we can then proceed to amend or adopt that legislative language, as the committee sees fit.

Mr. BERGLAND. In light of that, Mr. Chairman, may I suggest that the committee take the catalog that has been prepared by the staff. I am referring to the one which has the title "inspection authority" on the extreme left hand side.

The CHAIRMAN. Yes.

Mr. BERGLAND. This document briefly describes the inspection authority.

The document from which I am reading, Mr. Chairman, must be six or seven pages in length.

The CHAIRMAN. Is it the material that starts out "issue" on the left-hand column?

Mr. BERGLAND. No, sir, it is the one that has the words "inspection authority" and "registration" on the left-hand side, and across the top it lists: administration bill, Smith bill, Melcher-Clark bill, Mezvinsky bill, and Senate Joint Resolution 88.

The CHAIRMAN. Does everyone have the staff document to which the gentleman from Minnesota is referring?

It is about six or seven pages long and says "inspection authority" on the left-hand side of the first page and "registration" on the second.

Mr. Madigan needs a copy.

This is a staff product identifying what the staff considers to be key topics for consideration. It describes five bills as typical of the range of possible judgment on these questions.

If there is no objection, the Chair would propose that we proceed with Mr. Bergland's suggestion. Let us use this staff document as a catalog of the topics for discussion, unless there is some objection?

Mr. HIGHTOWER. Mr. Chairman.

The CHAIRMAN. Mr. Hightower.

Mr. HIGHTOWER. Thank you, Mr. Chairman.

In briefly reviewing these issues, is it possible that there may be some that we will have very little disagreement on?

Could we perhaps consider a different arrangement that the one that is outlined in this staff document?

Or should we proceed in the order that they have cataloged?

The CHAIRMAN. The Chair would be glad to have any suggestions that members would like to make.

I do not know that there is any particular topic here that is totally noncontroversial.

Probably, the most central of all of these issues, however, is that of inspection authority since all other issues hinge on that.

If, as a committee, we decide to retain private inspection authority, some of the issues are influenced by that decision.

If, on the other hand, we follow Mr. Mezvinsky's proposal of all-Federal inspection, we no longer have the problem of setting standards for private inspectors or licensing private inspection agencies.

Mr. BEDELL. Mr. Chairman.

The CHAIRMAN. Mr. Bedell.

Mr. BEDELL. Thank you, Mr. Chairman.

If we go through these items, then will the staff or someone prepare a bill which can be taken up with amendments or changes?

The CHAIRMAN. Yes; as I just said, that could be done once some preliminary decisions have been made.

I would, however, like to point out that no member need consider himself permanently bound to a position.

When we begin considering amendments to a proposed bill, members may certainly vote any way they see fit.

The purpose of the initial discussion would be simply to provide some guidance as to what policy the committee intends to pursue.

After those decisions are made, we can have a committee print prepared for use as a working document.

After the preliminary markup is concluded on the working draft, if the committee wishes, it could be introduced in bill form and brought back for final action.

Mr. BERGLAND. Mr. Chairman.

The CHAIRMAN. Mr. Bergland.

Mr. BERGLAND. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. Proceed.

Mr. BERGLAND. As we proceed with this conceptual markup, and we arrive at decisions on, for example, the first issue, inspection authority, will that decision be placed upon the record in the form of a recorded vote?

Would it be a straw vote? How is that handled?

The CHAIRMAN. The Chair does not feel that it is technically possible to bind members until a bill is before the committee in final form.

The whole process of making policy judgment is, in effect, a straw vote.

The whole function of this exercise is to make the eventual markup more orderly. For the moment, a show of hands will serve to indicate the general will of the committee.

The critical part is the markup of the committee print. If members demand it, however, we could have rollcall votes.

Mr. THONE. Mr. Chairman.

The CHAIRMAN. Mr. Thone.

Mr. THONE. Thank you, Mr. Chairman.

As you indicate, the inspection authority aspect is vitally important in regard to how we proceed.

I am thinking out loud with you on this. Just to narrow the range that we have, would it be in order to move at this time for rejection of the all-Federal proposal envisioned by the Mezvinsky bill?

The CHAIRMAN. I think it would be in order; but before the gentleman suggests that, let me add one other thing.

If a vote is very close, and let us say we have 12 members favoring one approach and 11 members favoring another one, we may want the committee print to reflect this by listing the possible alternative sections under each heading.

Then, by striking one or the other, we would get to a final judgment.

If, on the other hand, there is almost unanimous agreement on something, then the print would reflect that.

Mr. FITHIAN. Mr. Chairman.

The CHAIRMAN. Mr. Fithian.

Mr. FITHIAN. Thank you, Mr. Chairman.

I would observe something at this time. I have no objection to Mr. Thone proceeding with his motion. It would, of course, mean that we take up the central issue first. This would be inspection authority.

We are all agreed, I think, that that is the central issue.

Earlier, we were casting about for possible areas of agreement. I would suggest that the conflicts of interest section and the penalty section may be shaded slightly one way or the other, but these are not really controversial or central issues.

My only question is whether we would proceed with Mr. Thone's motion, which would have us take up the most controversial issue or whether it should be the other way around.

The CHAIRMAN. Will the gentleman yield?

Mr. FITHIAN. Yes.

The CHAIRMAN. The conflict of interest provisions become unnecessary if you have an all-Federal inspection system. Because the administration's proposal retains private inspection authority, however, there is a strong conflict of interest provision.

As members have pointed out, there is no guarantee that Federal or State employees are more moral than those of the private sector. There is, however, a separate problem when you have private agencies.

Conflicts of interest situations can arise that one assumes would not be possible with a Federal agency.

In actuality, whether that assumption is valid or not is subject to discussion.

At any rate, if we spend a lot of time hammering out a good conflict of interest provision and then adopt a Federal inspection system, we will have wasted our time.

Mr. HIGHTOWER. Mr. Chairman.

The CHAIRMAN. Mr. Hightower.

Mr. HIGHTOWER. Thank you, Mr. Chairman.

In line with Mr. Thone's motion, I would suggest that we move along with this summarily. I would suggest that we make some straw judgments for the purpose of getting a markup bill.

Then I would suggest that, when the markup bill is before us, we can proceed more in depth along with the amendment process.

The CHAIRMAN. What we will be dealing with initially, if the committee agrees, are basic concepts such as the basic inspection authority and with whom it lies.

The exact legislative wording will be handled in the committee print; and once this is available, any member wanting to offer amendments may do so.

Our preliminary work will serve as a kind of roadmap to the staff in developing a committee print.

Mr. BEDELL. Mr. Chairman.

The CHAIRMAN. Mr. Bedell.

Mr. BEDELL. Thank you, Mr. Chairman.

I certainly do not intend to do this, but, if we were to have a straw vote here and rejected the Federal inspection issue, would it then preclude a member, if he wishes to do so, from offering an amendment that would call for all-Federal inspection?

The CHAIRMAN. You might find it all the more difficult to win support for such an amendment, but you certainly have every right to introduce it.

I want to again stress that nothing in a straw vote binds any member. Each of you can change your mind, move around, or entirely reverse your position.

Mr. Thone suggests that we proceed on the inspection authority by rejecting the concept of "all-Federal".

Is there any discussion on that?

Mr. BROWN. Mr. Chairman.

The CHAIRMAN. Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

If we are going to discuss that now, then I would like to be recognized.

The CHAIRMAN. The gentleman from California is recognized.

Mr. BROWN. I am not an expert at all in this field. Therefore, my comments tend to reflect philosophical considerations rather than knowledge of the subject matter.

I hope the committee will understand that. I make these remarks only because I think that it might be assumed from my general political coloration that I might support all-Federal inspection procedures.

I do not.

I think it would be unwise to continue to expand what will be politically described as the Federal bureaucracy into any more areas than is absolutely mandated by urgent national needs.

While I recognize the importance of this area, I do not think that it mandates a further, and rather extensive, expansion of the Federal bureaucracy in order to achieve a significant goal.

My posture, therefore, will be to support what perhaps could be described as a mixed system.

I think that there should be room in it for private and State or local inspection procedures with only sufficient Federal involvement to insure the integrity of the system.

I do not know and could not define for you what that degree of involvement would be.

Obviously, it requires that there be some Federal supervisory role. This seems to have been inadequate in the past or else we would not have had the frauds which have developed.

As a philosophical matter, it will be my intent to support a mixed system with a minimum degree of Federal supervisory involvement. I believe the sole goal of Federal involvement should be to protect the integrity of the system and not to carry out the actual inspection of the grain processes itself.

I yield back the balance of my time.

Mr. BALDUS. Mr. Chairman.

The CHAIRMAN. Mr. Baldus.

Mr. BALDUS. Thank you, Mr. Chairman.

My question is this: Earlier Mr. Bergland raised the point that we might proceed, using as a backbone for consideration, Senate Joint Resolution 88. Is that the Chair's intention and will that help the members?

The CHAIRMAN. No, sir, that was not our intention.

As I understand it, the committee's intention is, rather, to proceed with the markup of a permanent bill. Then we might consider possible temporary legislation consistent with that.

Mr. BALDUS. Thank you.

Mr. THONE. Mr. Chairman.

The CHAIRMAN. Mr. Thone.

Mr. THONE. Thank you, Mr. Chairman.

In response to the gentleman from California, I would like to say that I think his comments are sound indeed.

Yesterday, we were advised at the briefing session over at the Capitol building that another \$3 million has been authorized to beef up the——

The CHAIRMAN. Will the gentleman yield?

Mr. THONE. Yes.

The CHAIRMAN. The staff advises me that the actual figure is \$5 million and is incorporated into the appropriation bill for Agriculture. Half of this amount provides training funds for Federal inspection personnel of a supervisory nature, and the additional funds are to strengthen the system.

Mr. THONE. Well good. This was surely needed.

The CHAIRMAN. That makes the point stronger.

Mr. THONE. Yes, it does make the point stronger.

It makes the case Mr. Brown made stronger, and I would like to echo it. I think everybody agrees that the Federal supervision here has broken down to some degree.

Even Assistant Secretary Feltner, when he testified, said that USDA just did not have the personnel and adequate funds to do the job that needed to be done.

Let's hope that will be taken care of. I will now get into federalization. I do not want to filibuster here because I think there is a

pretty strong consensus here that we do not want to go the all-Federal route.

As Mr. Brown indicates, we do want to stay with the Federal, State, and private system.

In your area of Los Angeles, Mr. Brown, the staff just gave me some information regarding the Federal meat inspection system.

Some people think that by turning this over to Federal inspection, all problems will be solved.

Well, that has been turned over to them, and in recent months there have been 15 meat graders indicted in the Los Angeles area.

There were 40 criminal work-related wrongdoings by Federal meat inspectors in the Boston area, not too long ago. Just to make them Federal employees will not do it.

And, who is going to inspect the Federal inspectors?

To overreact in this whole field, as H.R. 8347 most certainly does, would be a real step backward.

I have a lot more to say, but I do not think that it is necessary, unless somebody has some questions.

Mr. BROWN. Will the gentleman yield?

Mr. THONE. I certainly would.

Mr. BROWN. If I may elaborate for a moment on the reasons for my own conclusions that I very briefly described, I would make the following observations.

I think it would rest upon the very facts that the gentleman cited that there is no panacea which insures that a Federal inspector, or a State inspector, or a private inspector, will necessarily be honest and full of integrity at all.

In each of these situations, there is or there are forces which are sometimes wholly innocuous which can lead to a distortion.

I am speaking about forces other than the susceptibility to outright bribes, which, of course, occur with Federal, State, local or private employees, if the bribe is sufficient and integrity is lacking.

It not only happens with people in this business, but it also happens with bankers or preachers or almost anybody else, as well.

There is no solution to that other than developing a greater sense of morality.

Aside from that type of corruption, there is a corruption which arises within an institution to protect the role of that institution, and to maintain one's own job security, and a number of other motives, which can lead to a distortion of the activities of that particular individual or the institution of which he is a part, be it private or public.

In searching for ways to overcome these institutional problems, I have found that, in my mind, there is no adequate solution until we have a larger number of people committed to certain basic individual values of honesty and integrity and so forth.

This does not come from legislation.

Hence, I have reached these conclusions. It still leaves unanswered a fundamental problem. How do we achieve a basic elevation in morality or a basic elevation in what you might call a sense of stewardship for the public welfare?

This is very hard to inculcate in individuals or institutions. This is because we all perceive what we are doing as embodied with a sense of

stewardship for the public welfare, whether it is or is not, if it only be conducive to our own personal welfare.

This goal is one that I do not know how to achieve. I do not intend to belabor it here because it is more philosophical than pragmatic.

Mr. THONE. In conclusion, Mr. Chairman, the Assistant Secretary testified that the cost of this total Federal grain inspection system would be about \$60.8 million.

It would, further, involve the employment of a Federal staff of approximately 3,200 additional persons.

Mr. Chairman, unless there are further questions, I would move the previous question.

The CHAIRMAN. Are there any members who wish to comment on this?

Mr. FITHIAN. Mr. Chairman.

The CHAIRMAN. Mr. Fithian.

Mr. FITHIAN. Thank you, Mr. Chairman.

As a cosponsor of the Smith bill, I am not now going to proceed to argue for the Mezvinsky concept of all-Federal inspectors.

I would observe that during our hearings several members of the committee seemed to be of the belief that we could at least minimize the temptation upon the individual if, in the cases of export trade, and if, in cases where we have an inspection which for whatever reason works solely for one grain corporation, then I think it is clear to most people that this increases the temptation.

If your team works entirely for one grain company, then the temptation to satisfy your only client must be considerably increased.

My point, therefore, is this. I would not want the philosophy that has just been described to prevail to the point where we would finally conclude that a mixed system of Federal and State inspection arrangements would not in any way improve the situation that we now have. I believe that this will.

The CHAIRMAN. Will the gentleman yield?

Mr. FITHIAN. Yes; I will yield.

The CHAIRMAN. I think that it should be clear by now that what we are about to determine is whether we intend to eliminate, at least at this stage in our consideration, an all-Federal system.

Mr. FITHIAN. I understand that.

The CHAIRMAN. Those that favor a mixed system, an all-private system, a system of Federal inspection at the ports, and private inspection at inland points, or public inspection at these points could all be expected to vote "aye."

Those who would be voting "no" are those who want to continue to consider an all-Federal system. That is the import of Mr. Thone's remarks.

Mr. FITHIAN. I understand that and I expect to take that up.

The CHAIRMAN. Explanations do not affect the outcome here.

Mr. FITHIAN. I understand that and intend to support Mr. Thone's motion. I just did not want to see a momentum created in the committee that would take us to the point where we would say, "Well, changing and putting more Federal inspectors into the game will not be the only way out of this."

The ultimate conclusion of the Thone position could well be, "Well, let us go all-private."

I would not want to support it, if that were to be the situation.

The CHAIRMAN. Will the gentleman yield further?

Mr. FITHIAN. Yes.

The CHAIRMAN. I think that it should be pointed out that the administration bill and some of the others anticipate, at least in certain circumstances, original Federal inspection.

We are not dealing with that in the question Mr. Thone has raised.

Mr. THONE. I would like to reemphasize that, Mr. Chairman. I say that by going all-Federal, we are getting into legislative overkill at its worst. We ought to dispose of that proposal quickly.

The CHAIRMAN. Very well. If there is not other comment, then we could have a straw vote.

We are not going to record members individually.

How many members would favor putting aside, for the purposes of drafting the committee print, the concept of universal Federal and sole Federal inspection?

[Show of hands.]

I think the feeling of the committee is clear in this and we can now proceed.

We will now turn our attention to the so-called public system. This is pretty much the concept of the bill known as the Smith bill.

When we say public inspection, we mean either State or Federal. The Smith bill would retain authority to the States to conduct original inspections under Federal certification and/or direct Federal inspection.

I will read the brief description. It provides for Federal inspection but authorizes the Secretary of Agriculture to designate State agency to provide service and impose Federal standards. It repeals authority for private inspections. It bans State agencies from export inspections and mandates inspection by USDA officials of all export grain.

Mr. POAGE. Mr. Chairman.

The CHAIRMAN. Mr. Poage.

Mr. POAGE. Thank you, Mr. Chairman.

I just do not see how we can deny a State the right to have an inspection system in its own State if it wants to do that.

We can provide that that inspection will not be valid for the purposes of export or something of that kind, but we just cannot deny a State the right to inspect grain within its own boundaries, as far as I know.

Mr. BERGLAND. Mr. Chairman, will the gentleman from Texas yield?

Mr. POAGE. Yes.

Mr. BERGLAND. Under current law, if a State has, operating within that State, private agencies, does the Federal law preempt the State and disallow them the right to take the service over?

In other words, the State of North Dakota, for example, has private inspection firms, is there any Federal prohibition against the State of North Dakota taking over that service, if the State legislature should so desire?

The CHAIRMAN. Although I do not know of any State that has done this, I do not think there is any specific prohibition, perhaps the Department would like to comment.

Mr. Galliard, of the USDA. We have no prohibition from States doing that.

The CHAIRMAN. Has any State taken over universal inspection within the State?

I do not know of any.

Mr. GALLIART. Not to my knowledge.

Mr. BERGLAND. Then, Mr. Chairman, there are no States that have taken over the entire function?

I am speaking about inspecting grain within the entire State.

My record shows that there are 23 States that have inspection services.

The CHAIRMAN. Yes; but if the gentleman will yield to me; they also have private inspection agencies operating within the State, side-by-side with the State agency.

Mr. BERGLAND. I see.

The CHAIRMAN. It is not a monopoly The State operates inspection services in such States as Illinois, but it does not exclusively control inspection.

Mr. GRASSLEY. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Grassley.

Mr. GRASSLEY. Thank you, Mr. Chairman.

Are there 23 States that do this?

The CHAIRMAN. They do some form of inspection, yes.

Mr. GRASSLEY. But only 23 States?

The CHAIRMAN. Yes; that is correct. Now, in reference to the Smith bill, let me again emphasize that, as I read it, it does not permit State agencies to operate, as such.

Instead, it authorizes the Federal Government to make agents of the State agencies to conduct Federal inspection.

This is similar to the Talmadge-Aiken concept of meat inspection in the State agency becomes the agent of the Federal Government for providing inspection services under direct Federal regulations and supervision.

The Smith proposal also would bar all but Federal original inspection at the export ports.

Mr. BALDUS. Mr. Chairman.

The CHAIRMAN. Mr. Baldus.

Mr. BALDUS. Thank you, Mr. Chairman.

I think that it might be useful to define various levels and points along the way. For instance, when a farmer delivers grain to the local elevator, he is paid on a certain grade and standard weight, and so forth.

The farmer generally has a competitive market situation where he can deliver to several elevators in town or go to several different towns within the community.

As I recall, it was the local operator that tested the grain there and arrived at a standard moisture content, and so forth.

Then, apparently the elevator operator sells it and it usually ends up in carloads for storage and then goes to a barge point.

Where are the other points? I think that we should make this very clear. I think that we should all have a very clear understanding as to where are these other points along the way.

The CHAIRMAN. Will the Department representative please comment on this?

Mr. GALLIART. Please tell me what it is that you want to have explained.

The CHAIRMAN. Would the staff and the Department please give Mr. Baldus an answer to his question?

Mr. BALDUS. I will repeat it. Just so that the committee and the members would have a clear definition of where the points are, I would like to ask this: There is an original point where the farmer delivers grain to the elevator operator. That is perhaps the end of his concern with the grain.

There is inspection there and there is a weight given there and there is a sampling of moisture taken there, and so forth. He gets a grade.

What are the other points that we are concerned with? I ask this so that we can find out what kind of inspection systems there might be at different points.

Mr. GALLIART. You can have inspection at the elevator point. It is usually not official, but performed by the operator of the elevator.

Mr. BALDUS. So, there is a question of trust between the operator and the producer.

I note that they use mechanical equipment for testing.

Mr. GALLIART. Yes; they use moisture meters and other types of equipment.

Mr. BALDUS. They sometimes take a weight sample and decide how much is extraneous or foreign material as well.

Mr. GALLIART. That is correct.

Mr. BALDUS. Depending upon what type of commodity we are talking about.

Mr. GALLIART. Yes. This is is unofficial. It is usually performed by the country elevator operator.

Mr. BALDUS. Are there some States or some places where there is a more formal system?

Mr. GALLIART. Some of the larger country elevator operators provide for official inspection. Usually it is a matter of where the inspection agency is located.

If it is close, they will call for an inspection official to come and do it. The elevator operator does not conduct an official inspection.

Mr. BALDUS. Do you mean by "official" a State or Federal agency? I mean not one of the two parties involved.

Mr. GALLIART. Yes, that is it.

Mr. BALDUS. Mr. Chairman, may I pursue this question?

The CHAIRMAN. Yes.

Mr. GALLIART. Did you say Federal?

Mr. BALDUS. I asked if that was one of them, and you said, "no."

Mr. BEDELL. Will the gentleman yield?

Mr. BALDUS. Yes.

Mr. BEDELL. Are you talking about grain that is delivered by the farmer to the elevator or grain that is shipped?

Mr. BALDUS. At this point I am talking about the point of delivery from the farmer to the elevator.

Mr. BEDELL. OK, let us keep those separate, because I think that they are different.

Mr. BALDUS. I agree. Would you please continue, Mr. Galliard.

Mr. GALLIART. The country elevator operator is the next step in the line. After the grain leaves him, it goes to a subterminal.

There is some difficulty in defining the difference between a terminal and a subterminal. We generally agree that the subterminal is usually located near the source of the product.

These subterminals accumulate grain from farmers and from country elevators. It is another collection point.

Mr. BALDUS. Is Minneapolis, or Des Moines, or La Crosse in this category?

Mr. GALLIART. Something less than Minneapolis, perhaps. I would say it would be a smaller town than that.

I would say that Minneapolis is a terminal port.

Mr. BALDUS. What about Mancato?

Mr. GALLIART. That depends, of course, on the size of the elevator, too.

It might be 1 or 1½-million bushel elevator. It is difficult to define a subterminal on the basis of size. As a matter of fact, it is determined more by location than by size.

It is a matter of gathering grain from the country elevator operators or from the farmer. At that point, at the subterminal point, it is a mix as to whether or not they utilize an official inspection agency. Many of them do.

Many official inspection agencies send samplers to grain elevators. The grain is sampled and delivered to the official inspection agency for analysis.

Mr. BALDUS. Are we talking about the elevator operator now? I mean the country elevator operator who deals with the major firms, one of which is Cargill, which might be making a market in the business.

Is that the deal between those two that we are talking about?

Mr. GALLIART. Yes. Cargill would request the inspection because they are interested in the quality.

Mr. BALDUS. The major company would then be the one who requests the inspection?

Mr. GALLIART. Yes.

Mr. BALDUS. The larger company?

Mr. GALLIART. Yes.

Mr. BALDUS. So that they could know something about the quality of their product and the moisture content of it, too, since after all we are talking about carload lots, by this time?

Mr. GALLIART. Yes; it is quality controlled.

But I should not mislead you into thinking that grain goes from the country elevator to the subterminal and then to the terminal. It is a mix of this.

You will find that grain can go from a country elevator to a subterminal or directly to a terminal, like Minneapolis.

It can also go to an export terminal. It depends on the location of the grain and the particulars of the situation.

Generally grain flows from the country elevator, to the subterminal, or the terminal, as the case may be.

Mr. BALDUS. Does the term "terminal" include a port such as Superior or Duluth, or a barge port like La Crosse?

Mr. GALLIART. Yes; it could.

Mr. BALDUS. I see.

Mr. BEDELL. Will the gentleman yield?

Mr. BALDUS. Then, that would be the next spot before it is loaded onto a ship? Before it goes into the export market?

Mr. GALLIART. That is correct. Of course, there are very many variations of this. If the terminal point is in Peoria, for instance, there is a river close by.

The grain would leave the terminal point and go downriver. The same thing is applicable in Kansas City or Omaha. There the grain is gathered at a terminal point, and, in many instances put on a barge and shipped downriver to an export terminal.

Mr. BALDUS. La Crosse is that way, too, and that is the reason that I mentioned it.

Now I will yield to Mr. Bedell.

Mr. BEDELL. Thank you. It can go directly from the elevator to a port facility, can it not? This happens very regularly in my area.

Mr. GALLIART. Yes.

Mr. BEDELL. In fact, they load grain trains to go directly to the port.

Mr. BALDUS. Trains?

Mr. BEDELL. Correct. Please correct me if I am wrong, but it is my understanding that this depends upon the contract arrangements between the buyer and the seller. If the buyer wants to, then he can request a certified inspection of that grain.

He might accept the inspection by the seller. The contract can say that whatever the inspection at the shipper's point shows is going to be the grade for which payment will be made.

Is that correct?

Mr. GALLIART. Yes; that is. That is one variation of contracting.

Mr. BALDUS. Are we talking about just point of arrival?

Mr. BEDELL. No, I am talking about point of shipment. It depends upon the contract. The contract can say that it depends upon the grade at the point of arrival or it can say that it will be paid according to the grade at the point of shipment, as well.

Mr. BALDUS. Are not many of those contracts, oral contracts such as over the telephone and so forth?

Mr. BEDELL. Will the gentleman from the Department please comment on that.

Mr. GALLIART. I think so, but I am not sure that I can answer that with any definitiveness.

I am not an expert on that. I think that much trading is done by telephone.

Mr. BALDUS. I see.

Mr. GALLIART. Many times the grain can flow from the country elevator to the port. There are some large hopper car units of 50 to 100 cars which are loaded at the country elevator or at several of them.

Then, from there, they go down to the ports as one unit. That does not mean that you load 100 unit trains from 1 country elevator. They might accumulate grain from several of them.

Mr. MADIGAN. Mr. Chairman.

The CHAIRMAN. Mr. Madigan.

Mr. MADIGAN. I would like to make a point here. There are some parts of the country where the size of the farms are large and the grain farmers today are increasing the on-farm storage which gives

him the possibility of selling directly to one of the big grain companies.

Then, the grain can be loaded directly from his farm to a barge to go to a Gulf of Mexico port. This bypasses the elevator and the sub-terminals.

Mr. BALDUS. The inspection of the grain and the agreement upon quality and moisture content and so forth would be the same, however.

It would be a matter of trust between the buyer and the seller. Any inspection system would be supplied at that point, is that not correct?

Mr. MADIGAN. Yes; but if there were to be meaningful inspection there, it would have to take place on the farm.

Mr. BALDUS. Or at the delivery point. Are you saying that it is mixed in the delivery in such a way that there would be no way to inspect it at the point of delivery?

Mr. MADIGAN. No; I am saying that it could be inspected at the point of delivery to the barge if there were somebody there to do that.

A farmer's 50 tons of grain could be going onto a barge of 350 tons of grain going to somewhere else.

At that point it loses its identity.

Mr. BALDUS. When it goes on the barge?

Mr. MADIGAN. Yes.

Mr. BALDUS. Thank you.

Mr. POAGE. Mr. Chairman.

The CHAIRMAN. Mr. Poage.

Mr. POAGE. I never dreamed that I was as ignorant as I am of this grain trade. You understand that they have not been selling much grain in the place that I am from. We have sold some grain sorghum now and then, and even in some substantial quantities, but we have not been involved in these heavy grain deals.

I do not understand, from what we are being told, just what this inspection is going to mean or how it means anything.

If the trade buys without regard to inspection, then what difference does it make, and can we sit here and should we sit here and deliberately prohibit a man from buying mesquite beans, if he wants to?

Mesquite beans are not worth much. Can we prohibit a man from buying them in lieu of soybeans and taking them, as such, if someone will ship them to him?

It seems to me that what you are telling us is that once a shipment of grain gets underway, whatever name was put on it when it was shipped and whatever grade it was given, stays with it until it gets to Tokyo or Rome or wherever it is going.

You say that the buyer buys on the basis of the quality and quantity that existed at the time it was shipped. What difference does it make to the buyer what was shipped?

The only thing that makes any difference to him is what he gets. I do not see what difference it makes to him whether somebody shipped Hard Red Winter wheat and they delivered oats to him; it does not do him much good. He is already bound to accept whatever grade was put on the grain at the time it was shipped. I think that this is what you are telling me.

Mr. BEDELL. Will the gentleman yield?

Mr. POAGE. Certainly.

Mr. BEDELL. I certainly did not mean to imply that at all. Those contracts are origin grade. It can be that the grade be determined at the point of shipment and be entered into the contract, or the grade can be determined at the point of delivery.

Mr. POAGE. Yes; I am sure that it could be, but you are telling me, as I understand it, that the practice of the trade is to accept the grade that existed at the time of the shipment.

Is that now what you have just told us?

Mr. GALLIART. It can happen that way.

Mr. BEDELL. No.

Mr. POAGE. Is that not what the gentleman from the Department has just told us?

Mr. GALLIART. It can happen that way. If there is an agreement between buyer and seller that he will accept No. 2 Yellow corn, then——

Mr. POAGE. I know that. I know I could take the corn green if I want to. I could agree that I would take it on the stalk. I could accept it as needing to be harvested, too.

I could, of course, agree to any or all of those things, but I do not think that we have any right to deny these people the right to agree to those things.

However, the practice of the trade is tremendously important, it seems to me. If the grain trade practice is to accept somebody's certificate at the point of origin then what difference does it make about inspection at the port? What difference does anything else make if I have bought something and I have agreed to accept whatever brand you put on it at the point of origin.

The volume that you claim you loaded at the point of origin is what I have agreed to accept. I have agreed to all of that. I have got to take it, under those terms and conditions, as I see it.

Mr. BALDUS. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. BALDUS. The difference is that if you are talking to each other on the phone and you say, "I am delivering to you No. 2 Yellow," and what you get is No. 3 Yellow, then there is a breach of contract.

However, you need an arbitrator. This is someone who will sample it and say that, in fact, what was delivered was No. 3 Yellow and not No. 2 Yellow.

Mr. POAGE. The point that I am trying to make is that if you are telling me that a man in Minneapolis says that this is No. 2, and I am going to get it delivered to Houston, then I have to take it as No. 2, regardless of what is delivered there.

Mr. BALDUS. Whether it is oral or written, it seems to me that you have a contract. If what is delivered in the car lots is something different, then the contract is violated.

Mr. POAGE. Then, what do you mean when you tell me that most of these grain dealers buy and accept the grade at the point of origin?

Mr. BEDELL. Did somebody say that? I did not hear it.

Mr. POAGE. That is what I understood.

That is what I understood both yesterday afternoon and this morning.

Mr. GALLIART. It can happen that way.

Mr. THONE. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. THONE. As far as export sales are concerned, almost all export sales, as far as grain is concerned, are on f.o.b. basis with the U.S. grade certification accepted.

Mr. GALLIART. Almost all.

Mr. THONE. This is because bank credit is being extended to the exporters, and if the bank cannot rely on that certification, then the exporters will not be able to get credit.

Mr. GALLIART. Yes; they use the certificate as part of the negotiation.

Mr. THONE. Part of the reason that they use this procedure is because of the tremendous credit that is needed from the financial institutions. They cannot get the necessary financing unless they can rely on the certificate. Is this correct?

Mr. GALLIART. Yes; as you know under the present statute, it is provided that if you sell grain by grade for export, then you must have it inspected.

Mr. THONE. Absolutely.

Mr. GALLIART. In these documents, the certificate of grade is used as part of the contract and used as part of the settlement documents.

Of course, this could be changed by contract. There is no question about that.

On that other matter that Mr. Baldus was inquiring about and to which Mr. Poage referred, of course, all domestic sales have inspection as being totally voluntary.

There is nothing mandatory.

Mr. BERGLAND. Mr. Chairman.

The CHAIRMAN. Mr. Bergland.

Mr. BERGLAND. I have a proposal Mr. Chairman.

The CHAIRMAN. Proceed.

Mr. BERGLAND. I would like to review the status of the present system. There are 111 private firms engaged in the business of inspecting grain. 23 States have a State program. There are 47 States in which there is an independent private inspection program. There are 41 States in which boards of trade of various descriptions have inspection programs.

There are, in the private area, currently, 1,600 people employed. In the Federal area, there are 174 supervisors who train and supervise these private inspectors. There are 1,200 State employees engaged in the sampling and inspecting of grain.

This makes a total of 2,970 people in the business.

There are 38 export points in the United States, 16 of which have State supervised inspection, and 16 have private inspection.

It seems to me, Mr. Chairman, that while I am for a State-Federal system, I detect a lack of support among the members of this committee for that proposal.

I think therefore to bring the issue to a head we might split the issue into two questions. One of these would be whether or not we want to federalize the export points, as provided for in the Smith bill.

The second question is whether we want to set up authority for a State system, or I should say, preempt the private systems in the interior points.

I must confess that I attended every moment of the hearings that were held on the matter and I, at least, have not heard evidence that

suggested any widespread corruption or malfeasance on the part of the interior inspectors, be they private or State employees.

We have, however, a record built upon the extent to which there is malfeasance and corruption in a number of the export points.

I therefore propose, Mr. Chairman, that we consider federalizing the export points, preempting the 16 States and 16 private agencies that are engaged in the supervision of the inspection process in these points, and that it be taken over by the Federal Government.

The CHAIRMAN. Will the gentleman yield to me?

Mr. BERGLAND. Yes.

The CHAIRMAN. What I was going to propose was a slightly different approach. First, we could consider this in some given sequence. If you will, you can view it as covering a broad spectrum ranging from the most Government control to less Government control.

We have disposed of the all-Federal system. Now, I would propose that we make a judgment on the Smith concept, which is all-Federal but allows States to serve as agents of the Federal Government at all points.

The next possibility, following along in sequence, would be a State-Federal approach in which the States do not necessarily serve as agents of the Federal Government but once certified operate side-by-side with direct Federal inspection at all points.

If those concepts are rejected, we would then move to consideration of all Federal inspection at the export points. And thus we would proceed until all possible combinations and approaches had been considered until agreement is reached.

Mr. MOORE. Mr. Chairman.

The CHAIRMAN. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

In this, where would the Federal, State, and private proposal of the administration bill be?

The CHAIRMAN. That is a lower level still and has not yet been discussed.

By lower, I mean, that it entails less direct Federal involvement.

I am trying to begin consideration with the most universal Federal control and to then work down. Anybody who wants to stop the process can vote accordingly.

Mr. ENGLISH. Mr. Chairman.

The CHAIRMAN. Yes; Mr. English.

Mr. ENGLISH. Mr. Chairman, I may be suggesting a dangerous thing here, but I think that Mr. Bergland has certainly found a short cut to save us a little time.

The CHAIRMAN. The only problem is that I think, in fairness to Mr. Smith, who spent a lot of time on the bill, we ought to at least have a vote on whether you want to reject his proposal or accept it.

To bypass it without consideration is not right.

Mr. THONE. Mr. Chairman.

The CHAIRMAN. Mr. Thone.

Mr. THONE. I move that we reject the all-public approach of the Smith bill, H.R. 8764.

The CHAIRMAN. Is there any discussion?

I would like to have a straw vote on H.R. 8764, and on the motion of Mr. Thone, that we reject this bill.

MR. BERGLAND. Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN. Yes, Mr. Bergland.

MR. BERGLAND. If the proposal of the gentleman from Nebraska is adopted, does that mean that we are preempted from discussing this?

MR. THONE. No.

THE CHAIRMAN. Mr. Smith's proposal does away with private inspection at all points in the United States. Further, it says that there shall be no independent State inspection at any point in the United States. What it does provide for is exclusive Federal inspection at the export points, and, if the Secretary wishes, State inspection at the inland points under Federal contract.

There is only Federal inspection for export at inland points, inspection is still basically Federal, although it may be performed by State agencies working under contract to the Federal Government.

Is that clear?

This is actually very close to the Mezvinsky proposal, except here State agencies can become Federal subcontractors.

Under the Mezvinsky proposal, no State agency could exist at all.

That is where we are. It does not preclude all-Federal inspection strictly at the ports, because we are now talking about a proposal that affects both ports and inland points.

MR. FITHIAN. Mr. Chairman.

THE CHAIRMAN. Mr. Fithian.

MR. FITHIAN. Thank you, Mr. Chairman.

I hope that we would not rush to abandon the concepts of the Smith bill, which I think are exceptionally carefully drawn.

THE CHAIRMAN. For the present, we are only talking about authority to inspect.

MR. FITHIAN. I understand that. We are about to decide whether or not we are going to abandon the all-public inspector concept, which is in the Smith bill, correct?

THE CHAIRMAN. What Mr. Thone suggests is that we now decide whether we want to reject or accept the Smith approach for inland points.

Again, the Smith proposal says that there is to be no private inspection of any kind, and that there is to be no independent State inspection of any kind at either inland points or ports. Further, it says that there is to be exclusive Federal inspection at export as well as inland points. At interior locations, however, the Secretary has the option of contracting with State agencies.

If you favor that precise program, you should vote—no. If you favor any modification or variation of it, you should vote—yes.

It might be, for example, that you want to apply the Smith proposal to export points only.

MR. BEDELL. I have a parliamentary inquiry.

THE CHAIRMAN. Proceed.

MR. BEDELL. If you do not know what you think, then is it alright not to vote?

THE CHAIRMAN. Of course.

MR. FITHIAN. Mr. Chairman.

THE CHAIRMAN. Mr. Fithian.

MR. FITHIAN. As I remember the hearings, one of the problems to which the gentleman from the Department has not referred to is a

rather central issue here. That is, when you inspect at the local elevator, in Indiana, and then you weigh at that point and put the grain on a hopper-car and it goes to a terminal in New Orleans, and people down there send back a dockage of 50,000 bushels on the shipment, saying that it was misweighed in Indiana, there is, at present, no way of compensating for this.

So, they go back to the railroads and say—You must have shaken off 50,000 bushels en route.

If the local interior elevator says that some grain has only a certain percentage of foreign matters in it, and therefore qualifies at a certain grade, and the inspector, working for a large grain corporation in New Orleans, grades it differently and says that it is accepted but with a new definition of the foreign matter, then there is a dockage for this shipment.

This dockage is passed back to the elevator operator in Indiana. He, then, has to adjust this.

If he is going to stay in business, he will have to adjust this. That is why you get corn this morning selling in Chicago for \$2.80 and bid in Lafayette, Ind., at \$2.20.

It is because they have to make up the difference. That means that the farmer who produced the grain takes it on the chin.

All of these differences in inspection that occur bring about temptation. In fact, that is precisely where the temptation comes in.

They do not accept, as the finite definition of that grain, what the guy in Lafayette, Ind., tagged on the car. If they did, then we would have no problem.

Mr. THONE. Will the gentleman yield?

Mr. FITHIAN. Yes.

Mr. THONE. All of the bulk grain that is shipped from Lafayette, Ind., is regulated by the Interstate Commerce Commission, if it goes by rail, is it not?

Mr. FITHIAN. Yes, it is regulated, but there is nothing at all to keep the guy at the other end, at the port, from saying, "I do not know how much you shipped out of Minnesota, but we are short several thousand tons down here and we are not going to pay you for it."

You can go back to the railroad company, under ICC regulations, but that does not get you compensation.

Mr. THONE. Why not?

Mr. FITHIAN. You say to the railroad, "You must have lost this", and the railroad responds—No; we did not lose it. So, the elevator who is unable to collect will, in the course of normal business events, over the year, compensate for this.

He is in it to make a profit. He has to be in it to make a profit.

Mr. BERGLAND. Will the gentleman yield?

Mr. FITHIAN. Yes.

Mr. BERGLAND. I think the gentleman makes an excellent point, however, he is dealing with a weighing question that will come up in a separate section of the bill. It is really not material to this issue.

Mr. FITHIAN. Mr. Bergland, are you saying, then, that the automatic acceptance of the grading in your town in Minnesota goes on, without question, to Turkey, without anybody down the line doing something like I suggested?

Mr. BERGLAND. If the gentleman will yield further, we have to make a distinction between grading standards and grading techniques as opposed to weighing.

Mr. FITHIAN. I understand that.

Mr. BERGLAND. It is entirely separate.

Mr. FITHIAN. I understand that.

Mr. BERGLAND. We cannot confuse the two. I do not propose to federalize weighing in this first section.

Mr. FITHIAN. Specifically, then, do they accept the grade of the grain without reinspection at the terminal port? It is my information that they do not. They both weigh and inspect it before they ship it off.

Mr. BERGLAND. Yes.

Mr. FITHIAN. Then we are talking about both weight and grade and that is the whole inspection system.

The CHAIRMAN. I note the bells for the House.

Mr. FITHIAN. I will close with this, Mr. Chairman. I would be very reluctant to allow all of the problems that the interior elevator operator has, and through him, the problems that all of the farmers have, by simply junking the concept of allowing the State to establish its own inspection system, which the Smith bill does.

It allows the State to establish its own inspection system.

The only thing that the Smith bill prohibits is that a State at a terminal port, for export, can be the inspecting agency. It prohibits private inspection in the system if a State establishes a system of inspection and licenses inspectors as State inspectors.

The CHAIRMAN. I think we can clear this up. My understanding of the Smith bill is that it bars all except Federal inspection at the export points.

Mr. FITHIAN. Correct.

The CHAIRMAN. Furthermore, it bars all private inspection throughout the system while authorizing the Secretary to designate State agencies to operate inspection at the inland points under Federal supervision and regulation.

Finally, it authorizes original Federal inspection at the inland points.

Mr. FITHIAN. Correct.

The CHAIRMAN. If you agree 100 percent with a proposal, you will want to vote "no" when the motion to set it aside is concerned.

If you agree 99 percent with it, we assume you will vote "aye" and then, at the next step down, vote "no."

We are not rejecting the whole concept of a mixed-public system in this vote. It is just that we have a motion to reject the specifics of the Smith bill, as proposed.

In other words, if the gentleman favors all-Federal inspection at the export points, and favors the right of States and private agencies to operate at inland points, if both are supervised by the Federal Government, then he would have to vote to reject the Smith proposal since it goes further than he feels is necessary.

Let me reiterate that the Chair is using this approach of proceeding from issue to issue by straw vote simply in an effort to avoid having the staff draw up a number of different bills having little or no support.

In an attempt to simplify matters, the Chair will identify the seven or eight different gradations or possibilities for inspection authority. The resulting list will be sent to each member in the form of a memo before our next meeting on Tuesday.

Mr. HIGHTOWER. Mr. Chairman.

The CHAIRMAN. Mr. Hightower.

Mr. HIGHTOWER. In anticipation of this breakdown, would this not be a good time to recess this meeting?

The CHAIRMAN. That is my intention. If there is no objection, we will attempt to draw up a document containing what we think are the main concepts at issue.

In the meantime, if any member wants to communicate ideas that he feels have not been brought out in the discussions, I hope he will feel free to do so.

Mr. FITHIAN. May I take 30 seconds?

The CHAIRMAN. Certainly.

Mr. FITHIAN. I would much prefer, when we come to this finally, taking the Thone proposition and dividing it.

Let us first of all determine whether we are in consensus and agreement about terminal facilities at ports. Should they be all-Federal?

I can agree with that. Then we will divide it off.

The CHAIRMAN. I will come back to these things.

We have no wish to prevent anyone from seeking support for his position.

If I may have the members' attention I should like to repeat something I said earlier when some members were out of the room; then we will adjourn.

You will be informed by memorandum that it is the Chair's intention to call the meeting to order at 10 a.m. on Tuesday, November 4. At 10 minutes after the hour, the Chair will recognize a member for the purpose of moving a point of order that a quorum is not present.

At that point, a record quorum will be taken. If a majority or quorum is not present, the Chair will recognize any member who wishes to move to adjourn the committee. This will become normal committee procedure.

We hope that you will come at 10 a.m. If you are not here at 10 minutes after 10 a.m. sharp, then you will not be answering your name on a quorum call.

In any event, the committee will either be in session or it will adjourn by 10:15 a.m.

The Chair will express its appreciation to those members who have come today.

The committee will stand adjourned until 10 a.m. on Tuesday, November 4.

[Whereupon, at 12 noon, the hearing was adjourned to reconvene at 10 a.m. on Tuesday, November 4.]

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, NOVEMBER 4, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Bowen, Rose, Breckinridge, Nolan, Baldus, Krebs, Hightower, Bedell, McHugh, English, Fithian, Jenrette, D'Amours, Wampler, Sebelius, Thone, Symms, Madigan, Peyser, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Also present: Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Gene Moos, staff analyst; Steve Allen, staff assistant; Glenda Temple and Susan Bell, staff assistants; L. T. Easley, press assistant; and John Baize, staff consultant, Subcommittee on Livestock and Grains.

The CHAIRMAN. The Committee on Agriculture will come to order.

The Clerk reports that we have a quorum.

The committee meets again for consideration of various bills before the committee on the subject of grain inspection.

At the last meeting we took some straw votes with respect to the general attitude of the committee members toward various approaches that might be used to give the staff some direction for preparation of markup drafts.

Mr. Moos, do we have the memorandum?

Mr. Moos. It should be in the members' material.

The CHAIRMAN. There is a mimeographed draft which is two pages long and is blue in color.

Mr. Moos. It should be on the bottom of the pile.

The CHAIRMAN. This staff committee memorandum attempts to describe the various approaches to grain inspection, moving from the most far reaching in terms of Federal inspection down through the various other options. No. 7 represents, I think, the administration's proposal.

No. 1, which we discussed at our last meeting, is Mr. Mezvinsky's approach for Federal inspection at both export and interior points.

The committee, at the last meeting, indicated a desire to pass over No. 1.

No. 2 would provide Federal inspection at the export and interior points. At the interior points, however, the USDA would be authorized

to designate State inspection services as its agents for inspection. This is the basic approach of Neil Smith's bill.

We were discussing this particular bill at the time we adjourned.

My thought was that we would go through these various options from the Mezvinsky proposal down to proposal No. 7. At any time a majority of the committee can indicate its preference for one of the proposals, and we can stop and give the staff instructions to prepare that approach for consideration.

Does everyone understand what we are doing here? Sometimes this is referred to as "bologna slicing."

Mr. Moos. Mr. Chairman, I would like to point out that No. 5 is the Department's proposal and No. 7 represents the present situation which exists under the present Grain Standards Act.

The CHAIRMAN. No. 7 suggests no change, is that correct?

Mr. Moos. Yes.

The CHAIRMAN. Without objection we will continue discussion on item No. 2.

Mr. BERGLAND. Mr. Chairman, I am a cosponsor of this bill. I tend to support the manner in which the Smith bill approaches the whole concept, but I must confess in the course of hearings at least, I was not satisfied that we had any evidence of any wrongdoing at interior points.

I have a hunch that it exists, but we have not found any yet and I therefore cannot document my position that clearly.

I do believe that we would be better off to have the States operating under a Federal license to do the inspecting in order to remove all questions and doubts that may arise with respect to the efficacy of the grades at the export and interior points.

I therefore, Mr. Chairman, would vote for No. 2.

The CHAIRMAN. Is there any further discussion?

Mr. POAGE. I think No. 2 goes too far. I think those of you who were in the discussion we had a moment ago will understand that this interior inspection, that is, the country elevator, is not supervised by anybody at the present time and I do not see how you are going to keep the farmer a free agent.

He makes a deal with the elevator operator, the elevator man makes his own decisions as to what grade he gives. The elevator man does the weighing. Of course, if he is stealing there is recourse for misrepresentation, but as long as the man with a truckload of corn drives up to much," he makes up his mind whether he will take it or not.

I think we have to have that degree of freedom on the part of the farmer rather than have somebody coming in to the interior points and making a decision as to what the grade is.

I know that this discourages the production of the better quality of grain. Of course, I can grow grain or wheat and probably get just as much for it as growing something of a better quality, because the elevator man is going to pay me probably upon what he figures is going to be the average of the community.

There could be an advantage to farmers to grow a better quality by having strict grading at every elevator. There are over 7,000 country elevators. To put somebody at each of those elevators becomes quite costly. It goes into the cost that the farmer must pay, and so it seems to me that it is more protective than we can afford.

Mr. BERGLAND. The Smith bill, of course, would not propose to establish Federal inspectors in every country elevator. I am sure the gentleman from Texas did not mean to leave that impression.

Mr. POAGE. No; I thought that is exactly what it was doing. When you said the interior points, I thought you meant the country elevators. You are just talking about the subterminal elevators.

Mr. BERGLAND. Subterminals; yes. Generally they are at major railroad intersections where grains are collected. As a rule that is where the inspection points will be.

Mr. POAGE. They do not have anything to do with individual farmers. If you make the inspection at subterminals only, you lose all of the advantage that there is from growing a good quality of grain. I think you have to have an inspection at the place the farmer delivers his grain, if you are going to hold out any inducement.

I think it is a good thing to assure a man of a real good quality, that he gets an advantage by growing a good quality, but I do not think this would do it.

Mr. BERGLAND. If the gentleman would yield, the establishment of a Federal system at every elevator would impose a very high burden on the industry. I am talking about producers.

This would cost it is estimated $1\frac{1}{2}$ cents a bushel. Frankly, Mr. Chairman, I do not think that is necessary, because in most country situations you do have a cleansing effect due to competition.

There are competing elevators, if not in the same community, certainly within a driving range that is reasonable.

The element of that competition does protect the integrity of the grading at the country point.

I have been a director in a grain elevator, and I know something about the business, having been connected with farming all my life. The problem that arises is when the grain leaves the elevator in the State of Iowa, and is headed for a market in Kansas City, the shipper of the grain in Iowa does not know whether the grade established when it arrives in Kansas City is going to be the true honest grade or not.

Therefore, the having of a State grading system at Kansas City under Federal license would insure that there would be no temptation for the grader to provide a grade that favors the buyer of the grain at the expense of the shipper.

The CHAIRMAN. Mr. Bedell.

Mr. BEDELL. I would like to get very clear what we are talking about in the Smith bill.

As I understand it, it does not increase in any way the requirements to ask for grading on their grain, is that correct?

Mr. BERGLAND. Is the gentleman asking me?

Mr. BEDELL. Yes.

Mr. BERGLAND. I do not understand the question, Mr. Chairman.

Mr. BEDELL. Right now, the only place that grading is required is when grain is exported and loaded to be shipped.

The CHAIRMAN. If it is sold by grade. There are some exports that are sold, however, without a grade, and these would not require inspection. Grains being sold by grade must carry an official certificate.

Mr. BEDELL. But am I correct that the Smith bill does not increase the requirements for Federal inspection, or inspection in any way throughout the system so that it would still operate as it does now,

where the country elevator would have their own man to do the grading as to what the grade would be for the farmer who brought his corn into the country elevator?

Mr. BERGLAND. The net effect of the Smith bill would be to eliminate the 111 firms who are engaged in the business of grading.

It would authorize a change in the law by which those employees who are currently working in the private sector could be switched to the public payroll.

In other words, the civil service requirements would be amended so that those who were qualified as Federal inspectors could go on the public payroll. The cost attached to the financing would be the same.

The CHAIRMAN. I think the gentleman's question is this: "Does the Smith bill require that Federal inspection be performed in a mandatory way beyond what the present requirements are?" To my knowledge it does not. It changes the character of the inspection as to who performs it, but it does not change or place requirements or standards for inspection beyond the present system.

Mr. BEDELL. So, if there were additional requirements in terms of costs or man-hours, then it would be simply because of the fact that the Government would not operate it as efficiently, probably, as the private grain inspection firms might operate now, is that correct?

The CHAIRMAN. That depends on how you allocate the costs.

Mr. BEDELL. The total costs?

The CHAIRMAN. Mr. Smith proposes to collect fees. It is a question of whether you want the service to be performed partially on a subsidized basis or totally by the fees charged.

If the gentleman will yield further. I would hope that the staff and our guests from the Department of Agriculture would feel free to raise their hands to correct any mistakes of fact that might be made here.

The Chair would welcome any direction or guidance.

Mr. Bedell?

Mr. BEDELL. The concern is that if we do go to Federal and State, or Federal inspection, as it would be now, if someone required inspection at the elevator to be shipped to the port, and if it was done by a private individual, then I assume that the port level would have priority over whatever inspection was performed, that is, at the shipper's point of origin. Is that a fair assumption if we were not to go to the total Federal-State system?

The CHAIRMAN. The inspection which is performed at an interior point satisfies the contract relationship between the buyers and sellers at that point.

The inspection which is performed for export deals with the contractual agreements at the export point.

Is that correct? It does not necessarily override whatever other inspection of the material might have taken place. The grain has usually been mixed with other grains at that point. It does not automatically rewrite the inspection that was done at the subterminal.

Mr. BEDELL. The trouble some of my shippers have is that they load grain on a boxcar, they ship it to New Orleans. They think they have No. 2 yellow corn in that boxcar. They grade it as such. It gets to New Orleans and then they say, "No it is not No. 2 yellow corn." When that happens, if we had Federal inspection at the port and private inspec-

tion at the local level, then how would the result be? Would it be origin grade as opposed to destination grade?

The CHAIRMAN. Yes, partially. It would also depend on whether anybody appeals the inspection or asks for a reinspection.

If the party is satisfied with the inspection performed at the subterminal, and does not ask for a reinspection, then that settles the matter at that level.

Later on, however, the inspection for export might be different, but that does not affect the earlier agreement unless it is appealed.

Mr. BERGLAND. I think the question is largely academic.

I know of nobody in the grain business who buys on the basis of an original grade. Nobody in Louisiana is going to base it on the grade established at a country elevator point in, let us say, the State of Iowa.

They just do not do it. It opens up too much hassle.

Mr. FITHIAN. Mr. Chairman, let us establish two or three points.

First, let me say that I am a cosponsor of the Smith bill. I would be happy to see the committee terminate going down this list at this point.

The 7,000 country elevators that we have been discussing are not going to be affected by the Smith bill. Therefore, we are talking about 300 subterminal elevators, and 50 terminal elevators, and 89 export elevators, if I understand the briefing we had this morning. That is the sole burden of the Smith bill.

The decision in the Smith bill would simply be to make those inspectors at those points either Federal, as in the case I presume, of the 89 export elevators and the 50 terminal elevators, or federally approved, State inspection system at the 300 terminal elevators.

The cost of this would be borne, in all probability, by those who need the inspection.

The main thrust of this effort is to remove the temptation which now exists in the system. That temptation simply is this: When a private inspection agency works for a grain corporation, they frequently work for only one or a very few.

It is the hope of the Smith bill, therefore, that the removal of the private inspection system and the federalizing of that system at the terminal and export elevators, and the Federal approval of State systems at the remainder of the elevators would, in some way, put a distance between the civil service employees or State employees working under the Federal aegis, to remove the temptation to weigh grain at a different rate or quality than it is done for the private gain that is involved in all the fraud and everything else that we have heard about recently.

I would like to establish one other point, and that is this. Frequently we have heard it said that it should not make any difference to the farmer, as to who inspects it once it is inspected and mixed with other grain. That is absolutely fallacious.

It is because the farmer and the local country elevator has to work on a margin, which takes into account all shortages and all grade differentials on down the line, that you get the spread.

If you subtract the shipping cost, then you get the spread that you have today between the country elevator and the terminal in Chicago or Kansas City.

That has built up over the experiences of the country elevator, knowing that on balance over the year he is going to be graded down or weighted down a certain amount.

This, then, is simply passed along backward to the farmer by reducing the price that he pays to the farmer, so there is no way that we as a committee can avoid the responsibility of knowing that a fraud in the grain inspection system in New Orleans does result in a reduced price for the farmer who produced the corn in Indiana.

That is simply a fact of life. I would not like this committee to proceed under the illusion that somebody upstream at the terminal or the export elevators eats the losses. They are not eaten upstream. They are passed back to the original producer.

This whole grain inspection effort that Congressman Smith and Congressman Bergland, and myself and others, are attempting to make in the bill, is an attempt to remedy the situation that is clearly demonstrated.

I am not a cynic, but I cannot believe that the grain inspection scandals which bubbled up in the Kennedy administration and then were subdued, and now have boiled out into the public in a vigorous and visible way, are isolated events.

I happen to believe that the slight shifting of grade or weight in the process of handling thousands and thousands, or hundreds of thousands of bushels of grain does not have to be very far off. You do not have to favor your buyer very much, in order to make an enormous difference in the profit that goes to the grain corporation.

I would be very happy, in conclusion, to see this committee terminate, as we go down through this greater to a lesser Federal involvement, at the point we are now which is the Smith bill.

The CHAIRMAN. The Chair recognizes Mr. Hagedorn, then Mr. McHugh, and then Mr. Hightower.

Mr. HAGEDORN. Does anyone have any information as to the actual number of private inspectors throughout the country that are employed by these 111 official grain inspection agencies?

Mr. BERGLAND. If the gentleman will yield, there are 1,200 persons employed as samplers in the private sector, and 400 employed as inspectors, for a total of 1,600.

Mr. HAGEDORN. Thank you. What we are talking about is eliminating the private inspection agencies and the employment of virtually 1,600 people.

If we are to shift over to a State inspection system, would there be consideration made in hiring the present inspectors, or are we just going to unemploy 1,600 people throughout the grain inspection business?

The CHAIRMAN. If the gentleman would yield, I think it is the intention of the various sponsors that the committee's decision is to adopt either an all-Federal or all-public system, some language will be provided to waive Civil Service requirements in order to give preference in hiring to qualified inspectors. Of course we will want to discuss this with the Post Office and Civil Service Committee.

If the gentleman will yield further, something we will have to bear in mind in arriving at our decision is the fact that an all-Federal system will sharply increase the need for qualified inspectors.

Without a provision for preference in hiring, the transition could be extremely difficult because it would be hard to obtain the kind of inspectors needed.

Any change in the law, I think, would probably involve a period of transition. Otherwise, when private inspection ended, there might not be anything available for a time to take its place. This would disadvantage the entire trade.

Mr. KELLY. Will the gentleman yield?

Mr. HAGEDORN. Yes.

Mr. KELLY. I would like to inquire if, in any of these plans which intend to Federalize the grain weighing system, there is any regard for the fact that there are 111 private firms with investors and staff who have rendered a service to the industry who are going to be arbitrarily wiped out?

This is something to be concerned about. It is a laudable thing to be concerned about, the 1,600 people who will lose their jobs, but how about these 111 businesses out there? As far as I know, there is no evidence that they are crooked or that they have done anything bad.

To have the Federal Government roll up a bulldozer and smash you is not a very palatable experience.

This would have to be considered, that is, the wiping out of that type of an enterprise.

The CHAIRMAN. Mr. McHugh.

Mr. McHUGH. At issue here, obviously, is the integrity of the private inspection agencies.

I have a question which at least for me may shed some light on that. This goes back to something we talked about in the briefing this morning.

As I understand it, if a person is dissatisfied with the original inspection, then he can either ask for a reinspection which, as I understand it, would be done in many cases by the private agencies. Or alternatively, he may ask for an appeal which would be handled by the Government.

I would like to know this. In those cases where there is dissatisfaction and where a reinspection is asked for or an appeal is asked for, what percentage ask for a reinspection and what percentage ask for an appeal? It seems to me that if there is a low percentage of reinspection requests, then that could be a reflection on the integrity of the private agencies.

Mr. THONE. Will the gentleman yield?

Mr. McHUGH. Yes.

Mr. THONE. As I understood the testimony from the witnesses, it indicated that in 1974 there were four million initial inspections.

From those inspections there were 21,942 appeals. Of those appeals 80 percent of the initial grades were sustained. Of these appeals 205 were carried to the Board of Appeals, and reviewed, where 80 percent of the original grades were again sustained by the Appeals Board.

This was less than 1 percent of the initial grades.

The CHAIRMAN. As I understand it, that is not what the gentleman is asking. I think his question is, when there was dissatisfaction with the initial inspection, how many of the 21,000 are appeals, and how many are reinspections.

Does anyone have that figure? If not, can we obtain this information?

Mr. KELLY. Mr. Chairman, may I ask a question at this time?

The CHAIRMAN. If Mr. Hightower will yield to you for a question, that will be fine.

Mr. HIGHTOWER. I would be glad to yield.

Mr. KELLY. I want to inquire about this. Is there any evidence that the private inspection system has been more defective than State and Federal inspection systems?

Is the corruption ratio higher among the private concerns than it is among the official organizations?

Mr. HIGHTOWER. Based on information I have from my area, they know of none throughout the entire history of any scandal or any charge of any wrongdoing from any of these private groups.

Mr. Chairman, I would like to ask a question, however, of whoever might have the answer. A private inspector is still federally licensed, is he not? So, all of the inspectors who are the employees of the private inspection agencies are still federally licensed. Is that not true?

Mr. NOLAN. That is correct.

Mr. BERGLAND. If the gentleman would yield, the agency for whom he works is not licensed.

Mr. HIGHTOWER. That is right, but if the integrity of what he does, as he makes that examination and makes that inspection, is questioned, then he is still licensed by the U.S. Department of Agriculture to do that particular thing.

We hear a lot of broad accusations about wrongdoing and suspected scandals, yet we have certain scandals that have been brought out in regard to the ports at Houston and New Orleans and other places.

But nowhere have we had anyone make a case against the private inspection system. We ought to have enough experience in government everywhere to know that individuals can be corrupted. There is no precedence for saying that, because one is privately employed, one is corruptible, and if one is federally employed then one is incorruptible.

That will not hold water.

Still, to say that we are going to cure all the problems by throwing out a system that is working and that is efficient is bad.

I want to address particularly at this point the country elevators. They say it will not affect the country elevators. My information is that it will affect the country elevators.

You get a Federal employee—and if we get an all-Federal system—then he will have certain hours and places where he will perform his assigned duties.

These private groups, which have the responsibility of trying to serve an area, send their inspectors where they are called to go. They do go to the country elevators. They do not require the farmer to haul it in to a certain subterminal. They will inspect it where he wants it inspected.

I think that is the service that will not be available, and if we go into a strictly structured all-Federal system, it would be at a great disservice to the producer and, I believe, will ultimately cost him a lot more.

Mr. NOLAN. If the gentleman will yield, with all due respect to the gentleman from Texas, I wonder if we are not laboring under a misconception.

You did state that the inspectors are federally licensed?

Mr. HIGHTOWER. I asked the question.

Mr. NOLAN. That is correct, but the GAO study points out that the condition of the license is not the integrity or the quality of the inspection. It is merely the competency of the inspector to inspect.

Integrity or quality of inspection is not part of the licensing requirements for being licensed.

Mr. HIGHTOWER. You cannot even bond somebody and guarantee their integrity. You cannot change their employ and guarantee their integrity. You license their ability.

There is no way that we can put any kind of guarantee as to integrity whether he is a State employee, a Federal employee, or a private employee.

Mr. NOLAN. It cannot be a requirement for licensing.

Mr. HIGHTOWER. I feel sure it is a requirement for licensing for all private groups, too. That is, that they be honest people.

I cannot imagine that not being a requirement.

Mr. NOLAN. It is not a condition or a requirement for licensing under the current system. That is one of the problems with it.

Mr. HIGHTOWER. Are you saying that you do not think it is a requirement of an employee to be honest for a private agency?

Mr. NOLAN. It is a requirement for all aspects of licensing to be honest, but a condition for licensing, under the current grain inspection system, has not that requirement. All they are required to do is to demonstrate their competency, and there is no effort to insure integrity or quality of the inspection under the current system.

Mr. HIGHTOWER. How are you going to change that by changing the system?

The CHAIRMAN. The time of the gentleman has expired.

Mr. Kelly, it is your time.

Mr. KELLY. Thank you, Mr. Chairman.

As I understood the colloquy that was just developed, the suggestion would be that in addition to the competency, there should be an honesty certificate.

Certainly, if anyone thinks that would help, we ought to have that because, if it would solve our moral problems to issue a certificate, then we have finally come upon the solution for everything.

Mr. NOLAN. Will the gentleman yield?

Mr. KELLY. Yes.

Mr. NOLAN. I was not suggesting that they sign an honesty oath, but I was suggesting that there is a need for greater supervision and a more intensive effort to insure the integrity of the inspection, as well as just simply assuring the competency of the inspector.

Mr. KELLY. I appreciate that, but usually what these moral standards amount to are that a person not having been caught committing a felony is called honest.

Beyond that, the standard would get one into Congress or anywhere else, that is, if he has just not been caught on a felony.

Mr. NOLAN. Will the gentleman yield?

Mr. KELLY. I will in one moment.

What the gentleman from Texas was trying to do was to indicate that we should not lay waste to a system that has been generally good, and arbitrarily destroy an enterprise that has been engaged in by private individuals for a long time and has served well, simply in pursuit of some sort of change because the Government seal is supposed to serve better.

The evidence is not that.

I think the system should be devised in such a way that people would be encouraged to be honest. Private inspectors would have their whole business and their whole life ground up in the thing being honest, because this could wipe out a company.

I think they would be very careful about that. It sounds like a good system to keep them honest.

I think experience teaches that a system to keep people honest is probably a good caution.

Mr. NOLAN. If the gentleman would yield, one of the things that the GAO audit points out is that when an inspector is being tested as to the integrity or quality of his inspection or his grading, he is told before then, in fact, by the Federal officials that he is now going to be tested and graded on his integrity and his competency, and his quality.

This is one of the ways to try to measure and test for integrity. You could conduct tests when they are not aware of it. You could go in from time to time after they have done their inspections, and you could test the integrity of an inspection.

That would be one simple way that I think we could improve upon the existing system. We could test for people's integrity, and perhaps catch a few more of the so-called culprits that we are supposedly worried about.

There are ways, then, that we can devise the licensing and inspection procedure to guarantee at least a little higher quality of integrity, or if not guarantee it, at least catch up with the culprits.

Mr. KELLY. If my time has not expired I would like to say this. I think the suggestion the gentleman makes it perhaps a good one, but that is a long way from putting the axe to the present system and instituting a complete Federal one.

Modifications and improvements on the existing system without creating a whole new Federal employment pattern is a world of difference.

Mr. FITHIAN. Will the gentleman yield?

Mr. KELLY. Yes, I will.

Mr. FITHIAN. I was impressed by the argument that there does not seem to be any evidence that the private inspection is lacking in efficiency and effectiveness, and honesty.

It was my impression, however, that over the past 6 months to 1 year the newspapers have been full of complaints by foreign buyers of American grain, and that they were getting grain with foreign matter far above what they had contracted for.

So I would guess that the proof of the pudding is in the eating, and that perhaps these complaints of foreign buyers are well taken.

When we talk about the loss of integrity of American sales in foreign markets, then we are talking very much about price. We are talking about foreign buyers, if they have a choice, buying from the

Canadian Wheat Board instead of from the American terminal in Houston.

The CHAIRMAN. The time of the gentleman from Florida has expired.

The Chair will ask the staff consultant to discuss a concept.

Mr. Moos. I think it would be useful to review the first paragraph on the memorandum on the grain inspection system.

I apologize if it has been difficult for the members to find. Evidently it was at the bottom of your pile of material.

The first paragraph reads:

Today there are 111 official grain inspection agencies giving service at 183 designated inspection points.

Of these 111 agencies, 23 are State operated, 47 are private ownership inspection agencies and 41 are private inspection agencies operated by some form of supporting organizations such as Boards of Trade, Grain Exchanges, Port Commissions and Chambers of Commerce.

These last 41 private inspection agencies were organized to provide a service to a particular locality, that is, to enhance the grain trade in that area.

Mr. FITHIAN. Could the staff answer a question at this point?

The CHAIRMAN. Certainly.

Mr. FITHIAN. I would be curious to know whether or not, as you broke them down into three categories of inspection agencies, whether you can answer the following.

We now have 52 indictments and 38 pleas of guilty, just in the recent efforts. From which of those three categories are these indictments and pleas of guilty coming at this point?

Mr. Moos. They are coming both from the private ownership inspection agencies as well as the private inspection agencies operated as a service in a particular area.

Mr. FITHIAN. Are any coming from the 23 State agencies?

Mr. Moos. Not to my knowledge.

Mr. FITHIAN. This may be a point well taken here, Mr. Chairman.

Mr. HIGHTOWER. Will you yield, Mr. Fithian?

The CHAIRMAN. Others are seeking recognition. The Chair intends to recognize first those members who have not yet spoken. Then, if any time remains for further discussion, we can continue.

I recognize, Mr. Krebs.

Mr. KREBS. Briefly, Mr. Chairman, I too am very much concerned about the elimination of the private sector from the inspection apparatus, because of the talk concerning corruption. We may possibly have forgotten or lost track of the fact that the issue really is not so much corruption, as a built-in conflict of interest.

This is what has bothered me about the system which we have been operating in this country.

I cannot help but feel that a private agency, which is far more closely connected to the ultimate buyer, is not going to have the same degree of objectivity that a Federal or a State inspector have, even with all of their flaws.

I do not think that, merely because an individual works for the Federal Government, he or she will necessarily have a higher degree of honesty than an individual employed by the private sector.

The crux of the matter is a built-in conflict of interest. I think this is something we should not lose track of.

The CHAIRMAN. Mr. English.

Mr. ENGLISH. Mr. Chairman, I simply want to emphasize somewhat the same point that Mr. Krebs was making with a little different angle and perspective.

It would appear to me, and I think that most of the members of the committee could agree, that each of the systems—Federal, State, local, or private—has strengths and weaknesses.

Under those circumstances it would appear to me that possibly we should be looking for a combination, instead of trying to say “Well, this system contains all of the virtues and has none of the ills of the other systems.”

It seems to me that this is the weakness of the Smith proposal, which states that the Federal system of Federal inspectors is going to cure all the ills, and is going to have none of the handicaps.

We all know from working with Federal agencies that they do have some handicaps, they do have some problems, and they do have some weaknesses.

I would certainly urge the committee to give serious consideration to the possibility of a mix of some type. I think we should combine the strong points of the various proposals, instead of trying to rely on one single system to do the job.

The CHAIRMAN. The purpose of these discussions is not to reach a final conclusion, but, rather, to give some guidance to the staff in preparing the draft. The members participating in the straw votes are in no way committing themselves. Although I do not want to rush members along in their consideration of the issues, the sooner we have some broad idea as to the structure and general thrust of the bill, the sooner we can begin the actual markup.

Mr. THONE. I think Mr. Fithian brought this up with staff member Moos. I see that Mr. Galliard is here from USDA.

We were discussing this the other day when the committee broke up. I asked him to break down for me the subject matter of these indictments that we have been hearing and reading about.

I have his compilation before me.

Am I correct in reading this, Mr. Galliard, that there is one direct indictment for a violation of the U.S. Grain Standards Act and all of the rest had to do with bribery, and perjury, and false statements, and violations like that? Do I read this correctly?

Mr. GALLIART. I think that is correct. I do not have the material with me, but I think that is correct.

The CHAIRMAN. Will the gentleman yield?

Mr. THONE. Yes.

The CHAIRMAN. Those of us who have had some experience in criminal practice or in the judiciary, may have learned that it is often hard to tell from the precise charge what circumstances or allegations sparked the investigation. Prosecuting officials sometimes tend to move on the charge that can be more easily established. It might be a perjury prosecution rather than a bribery prosecution. Perjury might consist of statements denying bribery.

Mr. THONE. Will the gentleman yield back?

The CHAIRMAN. Yes.

Mr. THONE. Bribery is one of the toughest of all to convict on, and I notice that of all of these, 13 of the indictments were based on

bribery. Seven have pleaded guilty, and six are evidently pending trial.

But your point is well taken.

I did not have this information until 10 or 15 minutes ago.

I thought all of this that we were reading about and hearing about was a direct violation of the U.S. Grain Standards Act.

The CHAIRMAN. If the gentleman will yield further, as I understand the U.S. Grain Standards Act, currently violations are considered misdemeanors rather than felonies. I think this is one of the things that the committee might want to consider.

A U.S. attorney who might want to bring a more severe charge would not bring it under the U.S. Grain Standards Act, but rather under the bribery or some other statute that carries a felony.

Mr. KELLY. Will the gentleman yield?

Mr. THONE. If I still have the time.

Mr. KELLY. I would like to inquire about this. Where does the grain leave from when it is being sent into foreign commerce? Does it all go out of New Orleans or does some of it go out of the Great Lakes, or New York, or where?

Mr. Moos. Mr. Kelly, it goes out of all ports around the United States.

Mr. KELLY. Fine.

What is the geographical location of these indictments?

Mr. Moos. Mostly in the gulf.

Mr. KELLY. That means New Orleans?

Mr. Moos. New Orleans and the Texas area.

Mr. KELLY. How many States are involved with these?

Mr. Moos. Two.

Mr. KELLY. Texas and Louisiana?

Mr. Moos. Yes.

Mr. KELLY. Would that not seem to indicate that although you might have one kind of inspector in one locality, it should not be a blanket indictment of everyone engaged in the business? In other words, all of the independent inspectors would not be crooked because they found a few in Louisiana and Texas?

Mr. BOR. The major portion of grain that is exported from the United States is exported from gulf ports; the larger portion, perhaps, from the area around New Orleans.

The U.S. attorney in New Orleans was the first U.S. attorney to bring forth indictments. The result of what happened in New Orleans is that investigations have progressed in other areas of the country, and it could well be that as time progresses there will be indictments brought elsewhere.

Mr. KELLY. Could we wait until we get those indictments before we are convinced that all free enterprise is guilty? Would that not seem logical?

The CHAIRMAN. The gentleman's question contains a conclusion not in evidence.

Mr. HIGHTOWER. Will Mr. Kelly yield?

Mr. Thone, may I ask Mr. Moos one question?

Mr. THONE. Yes.

Mr. HIGHTOWER. Did any of the indictments occur as the result of an inspection problem at the interior, or were they all along the gulf coast? Did anything criminal happen at the interior points?

Mr. MOOS. Not to my knowledge, no.

Mr. THONE. Let me ask one more question. When do we get the preliminary briefing from the GAO?

The CHAIRMAN. It is scheduled for tomorrow morning.

Mr. HAGEDORN. Will the gentleman yield?

Mr. THONE. Yes.

Mr. HAGEDORN. Is it true that most of the private inspectors engaged in inspection are at the export points? What percentage are at the export points as opposed to the interior points?

The CHAIRMAN. Although there is no original Federal inspection, there is original State inspection.

Mr. HAGEDORN. Thank you.

Mr. BERGLAND. My record shows there are 38 export points in the United States. At 16 of these the inspection is performed by a State agency, and at 16 it is provided by private firms.

I would like to comment briefly on the comment of the gentleman from Florida. I think he is absolutely correct. We have to be careful that we do not in any way suggest that all persons employed in this industry are inherently dishonest. I completely agree that that is not a true statement.

At the same time, I do not think we should be blinded to the reality of the situation.

The CHAIRMAN. Mr. McHugh?

Mr. McHUGH. I sense the chairman recognizes me reluctantly.

The CHAIRMAN. If there is no other pressing comment, I would like to take a straw vote on Nos. 2, 3 and 4 after Mr. McHugh has spoken.

Mr. McHUGH. I will be very brief, Mr. Chairman.

I have no precommitment to this area. I am certainly not an expert.

But by way of comment it seems to me that one of the major concerns is the fact that, in the eyes of foreign purchasers of grain, our system has been substantially compromised.

Therefore, it would seem logical to me that in order to restore the confidence of the purchasers of grain, it may be necessary to federalize the export points. At the same time I think that some of the points made by Mr. Kelly and others are certainly valid, that is, that it may not be necessary or even reasonable to federalize points in the interior.

First, they are not the primary concern of foreign purchasers, and second, apparently there is not satisfactory evidence to indicate that there is widespread corruption there.

At the same time, I think that what Mr. Krebs says is true. The conflict-of-interest problem is quite real, regardless of the perception of foreign purchasers.

Therefore, it seems to me that one sensible approach might be to federalize the export points so as to meet the legitimate concerns and perceptions of foreign purchasers. But, with regard to the interior points, we would not eliminate the private agencies but simply adopt in the legislation very strong conditions which would get at the conflict-of-interest problems which Mr. Krebs has pointed out.

The CHAIRMAN. Thank you. Mr. Madigan is now recognized.

Mr. MADIGAN. I might not be able to contribute anything. I am confused now as to what the straw vote is going to be on.

The CHAIRMAN. The straw vote will occur next on whether we pass over No. 2 as a model for the draft.

Those who wish to pass over it in favor of some model farther down the list will vote aye.

Those who support the Smith proposal and want to have it be the model will vote no.

We can do it the other way round if you prefer, but this is the basic approach. The aye vote would be to pass over No. 2 and go farther down the list which involves less federalization. Those who like No. 2 would vote no.

Is that clear?

Mr. MADIGAN. Perhaps this is not the time to say this, but at some time this has to be said.

The system of establishing inspections at the export point and nothing at the interior point is not going to accomplish anything, because all of this material comes from the interior. If it comes down the river on a barge, or comes on an Illinois Central freight train or however, then if it is not what it is represented to be and if you have established some system of Federal inspection which begins to reject all of this grain which comes down, then you are going to have a terrible mess in trying to move grain.

A point that has to be made right now, I think, is that the farmers are really saying "How does it get to be that bad?"

"Do the grain companies shovel in the stuff? Is it mixed up in the elevator or what happens to it?"

What they fail to remember is that they have very bad years. The central Illinois farmers usually have very exceptional years.

Last year they had a year where the spring was very late. The planting was late. There were rains. The frost was early, and the corn crop and soybean crop was very inferior. But all that grain was sold. All of it went somewhere.

That happens in other parts of the country.

That interior grain eventually winds up in the markets.

When you are talking to farmers and listening to farmers and they are saying to you "That is not the stuff that we grow" as a matter of fact it is. I am not in favor of a Federal inspection system, but I just do not believe that you can ignore that all of it comes from the interior. If you are going to set up a meaningful system there is going to have to be something there to recognize it.

The CHAIRMAN. Mr. Grassley.

Mr. GRASSLEY. Would you review for me last week's and this meeting. There is only one decision that we have made, that is by a straw vote. That is to pass over the Mezvinsky position, is that correct?

The CHAIRMAN. The gentleman is correct.

What the Chair proposes to do, with the committees concurrence, is to consider now model No. 2, which is basically the Smith proposal, and to decide whether to stay with it or pass over it. If we pass over that, we go on to No. 3 and so on, until the majority of the committee says "stop, this is the model we want to work with."

If everyone understands that, and there is no objection, we will take a straw vote.

Again, I emphasize that these votes are in no way binding, and can later be changed during final markup. We are just trying to give some guidance for drafting of the committee prints.

All those who wish to pass over the Smith proposal, indicate by raising your right hand.

The CLERK. Eleven.

The CHAIRMAN. Those opposed to passing over the Smith bill, raise their hands.

The CLERK. Eight.

Mr. NOLAN. I do not know what the procedure is, but if proxies are allowed in straw ballots Mr. Richmond would like to be voted no on the straw ballot.

The CHAIRMAN. Since that was a close vote, let us go on with the idea that the Smith proposal will probably remain before the committee in one form or another.

Mr. Hagedorn?

Mr. HAGEDORN. I think there is a compromise that maybe if we had the State and private at the interior, and the Federal at the export points that this might be the solution.

The CHAIRMAN. I would like to go to No. 3 next. No. 4 comes pretty close to the so-called proposal and can be broken down into two points.

No. 3, in effect, again puts private inspection out at both exterior points and interior points, and provides for a system of either Federal or State inspection at both points.

It reflects a bill introduced by Mr. Burlison. If there is no objection, I would like to see how many people favor passing over No. 3 and to proceed further down the list.

The CLERK. Thirteen.

The CHAIRMAN. Those opposed?

We will pass over No. 3.

The next item is No. 4, which we could consider in two modes. This item provides for Federal and State inspection at export points, and private inspection at interior points.

I assume that we would not necessarily be putting the States out of business at the interior points.

The key to this proposal is that only State and Federal inspection would take place at the export points.

Is everybody clear on that?

Mr. BERGLAND. I have a question. Does that mean that the State would be operating a Federal program under a State license comparable to meat inspection?

The CHAIRMAN. That is something that we would have to determine. If we wanted to rarefy this a little more, we would have to decide if there were to be public inspection only, that is State or Federal, at the export points. Then we would also have to determine how States operate at the export points if this approach were adopted? In other words, would the States operate as agents of the Federal Inspection Service or would they operate a little more independently?

We can get into that more specifically if there is strong interest in this particular model.

Is everybody clear on this point, which represents a rather important departure.

This would retain in some form State inspection at the export points, but would completely eliminate private inspection there.

Yet, it would retain private inspection either by nonprofit or private inspection at the interior points, along with the existing State inspection systems.

Original Federal inspection at interior points would not take place unless there was a lack of private inspection service.

Mr. FITHIAN. How do those of us vote who would like, with a minimum of our efforts, to see that all export points are federally inspected?

The CHAIRMAN. You vote "no" in passing over No. 4.

Mr. FITHIAN. As I understand No. 4, you could go ahead and retain the Texas or Louisiana system or any other State system under No. 4.

The CHAIRMAN. What you really favor is having total Federal inspection at the export points and perhaps a mixed system at the interior.

Mr. FITHIAN. Yes.

The CHAIRMAN. We might refine that approach later.

Mr. BALDUS. My question is about No. 4. It talks about interior points. How is this considered?

Mr. MOOS. Export points.

Mr. BALDUS. Would that be so of all of the lake ports which would be in fact export, although they are interior?

Mr. MOOS. Yes.

Mr. BALDUS. This would also be so of any river ports that would really be dealing in export.

Mr. MOOS. Selling directly at export, yes.

Mr. POAGE. New Orleans is a 100 miles from the ocean. It is an interior point but an export spot.

The CHAIRMAN. If you are in favor of some restriction on export points through the elimination of private inspection, export points, then I think you would vote no on No. 4.

The next step down would be Federal, State and private inspection at export and interior points.

How many people would like to pass over No. 4?

How many people would not like to pass over No. 4?

The CLERK. Fifteen.

The CHAIRMAN. That definitely is going to be one of the models then.

We can prepare a draft providing for exclusive Federal inspection at the export points.

Mr. BERGLAND. I have a question on that point. I am for Federal inspection at the export points, but I would not object to having that farmed out to a State.

The CHAIRMAN. How many people prefer to have the Federal Government either the exclusive agent at the export point or the agency which may contract with the State to perform inspection?

The CLERK. Fourteen.

The CHAIRMAN. How many would like to have only Federal inspection without even authorizing contracting with the State at the export point?

The CLERK. Three.

The CHAIRMAN. How many would like to have the States be largely independent at the export points, if they can provide the necessary services?

Mr. KELLY. I do not understand the last question.

The CHAIRMAN. The question comes down to how much of a role the Federal Government should play with respect to certifying the States to perform export inspections.

Under the Smith proposal, which covered both export and interior points, the Federal inspection service could designate a State to perform Federal inspection at interior points. Another approach would be to have a qualified State handle inspection.

This is a refinement, but what it really comes down to is to what degree does State inspection exist at the export points and is there Federal supervision over that State agency?

In the meat inspection business, for example, there are two kinds of inspection. One is performed by the State when State inspection agencies are determined to be equal to the Federal inspection. In this case, however, movement across State lines of inspected meat products is not permitted.

The other is the so-called Talmadge-Aitken plan, where State inspection service really is based on a contractual arrangement with the Federal Government to perform both State and Federal inspection. Under the Talmadge-Aitken plan, you have a Federal seal on meat products inspected by State inspectors under a contract arrangement with the Federal Government. This is closer to Federal supervision.

Mr. KELLY. Your question was related to the last sequence?

The CHAIRMAN. Yes.

Very frankly, I think there is some feeling that the Federal export responsibility should be direct or, at least, a very close contractual relationship should exist with States, so that if the State agency performs inspection for the Federal Government, there would be a close control.

Mr. Moos. Mr. Chairman, just a point of information which goes back to Mr. Baldus' question about what is considered an export point.

The Department advises me that any export point on the ocean or the Great Lakes is an export point. Whereas river points are considered interior points.

The CHAIRMAN. Is anything on the gulf, the oceans, and the Great Lakes considered an export point while river points are considered interior?

Mr. Moos. Unless identity preserved shipments down river by barge.

The CHAIRMAN. Could you have a situation in which private inspection is conducted in behalf of two parties, one of them being a terminal at an export location while the grain in question is not necessarily marked for export?

Mr. POAGE. It would seem to me that if somebody wants to buy grain from a terminal elevator, and wants to haul it back up into the interior, and wants to buy it on his own responsibility, then I do not think the Government ought to step in and say that he cannot buy it.

But if he is going to export it, then it seems to me that we ought to require Government inspection if the grain is moved into export at any time that it is moved.

The CHAIRMAN. I would like to ask Mr. Galliard a question. Suppose we are talking about a terminal that is located at New Orleans.

The grain received in that terminal may be exported to inland points for processing, or it may be shipped out in an export order. Are you with me?

Mr. GALLIART. Yes.

The CHAIRMAN. If we decide to make export grain subject to some kind of Federal inspection, would it be possible that grain in that export area might not be exported, but instead shipped from a terminal to an inland point, thereby making private inspection valid?

Mr. GALLIART. It would be valid, but it would be very difficult to have the two inspection agencies working the same elevator.

The CHAIRMAN. Thank you.

Mr. BALDUS. Would it be useful to clarify that? Do exporters have licenses to identify the trade which is going through an exporter to foreign trade? Do you identify the flow of trade rather than just the point?

Mr. Moos. If you are asking if there is a license for export, the answer is no.

Mr. BALDUS. Would it be useful if we created that?

The CHAIRMAN. The administration bill proposes registration.

Mr. BALDUS. If we have registration, then you would have another identity which would be different from interior and exterior. This would be marked simply for export. If it flowed through the hands of that registered exporter, then it would have a certain kind of inspection.

Would that be useful, is my question?

Mr. Moos. It could very well be. I do not know the complexities of that.

Mr. GRASSLEY. In regard to who is going to inspect exports; a portion of your bill calls for foreign monitors. I would like to know whether you favor that portion of the bill.

That is immediately beside the point.

Do you see the two complementing each other, or not necessarily related at all? In other words, the extent to which they have a more foolproof inspection at the export point, and who is going to do it, the State or the Federal, or a private agency, and the extent to which we have foreign monitors?

The CHAIRMAN. My own impression is that foreign monitoring is more consistent with the continuation of private inspection at the export points.

If the grain inspection service is to perform original inspection at the export points or to contract with States to do it, then the case for foreign monitoring is weakened.

As I understand it, one of the principal reasons for having foreign monitoring would be to check the validity of the inspection done by private agencies at the export points; therefore, if we have Federal inspection there would be less need for that. Under the circumstances. I do not think I would favor the establishment of foreign monitors.

Mr. GRASSLEY. Under any circumstances?

The CHAIRMAN. Mr. Wampler and I have to keep reminding the committee and the community that we introduced the administration bill as a matter of courtesy to bring it before the committee. It does not necessarily reflect our views.

Mr. GRASSLEY. Then you see the foreign monitoring in the case of Federal inspection at export points a duplication?

The CHAIRMAN. Yes.

Also, I think it could be difficult to carry out in the foreign ports without the participation of the foreign governments concerned. Such an arrangement could become quite complex and awkward.

Mr. POAGE. If the Federal Government does the inspection at the ports—and I favor that—then the Federal Government would thereupon guarantee the delivery of the commodity to the foreign ports. If you do that then you have to have somebody make the decision as to whether it actually met the specifications when it arrived at the foreign port.

The CHAIRMAN. The purchaser of the grain received in foreign ports also inspects it as it arrives. The question is whether you feel it is necessary to have USDA monitors in those foreign ports for additional checking. I think this point is rather independent of the other issues.

Mr. Moos. Mr. Chairman, I think it needs to be pointed out that foreign monitoring does not mean foreign inspection. That is, an inspection at the receiving point in a foreign country. It is a monitoring device to provide a check.

The CHAIRMAN. In other words, it is a random check?

Mr. Moos. There is no way that they could have an accurate inspection of grain unloaded at the other end, unless they could probe the whole ship. It would be more of an eyeball review of what the situation is and what the condition of the grain might be at the point of arrival.

It might relate to the needs for different kinds of varieties which would be able to survive shipment in a more satisfactory manner and that sort of thing.

Mr. GRASSLEY. But it is integrally involved with the public relations aspect of the whole sale of American grain to foreign countries.

The accusations against so-called bad grain are around.

Mr. Moos. It would be very difficult to establish any kind of a positive relationship for legal purposes, because the sampling techniques would be so much different that it would not be representative as far as the landed quality of that grain as opposed to the loaded quality.

The CHAIRMAN. The Chair is getting some strong impressions of the committee's views. I do not want to pass over too quickly, but let me reverse the order now.

Is there any support for the idea of limiting all inspection at both export and interior points to State agencies only?

Is there support for the concept of the administration bill, otherwise surreptitiously known as the Foley-Wampler proposal? This would retain private, Federal, and State inspection at both interior and export points with the conflict of interest requirements and so on.

Mr. GRASSLEY. This is maintaining private inspection?

Mr. WAMPLER. I think that ought to be one of our considerations.

The CHAIRMAN. Without objection then, the Chair understands that we will consider about three options: The administration proposal, the Smith proposal, a proposal to maintain Federal and, under Fed-

eral contract, State inspection at the export points while retaining private and State inspection at the interior points.

Mr. NOLAN. With all due respect to the chairman of the committee and the ranking member, I did not see any visible evidence of support for the administration proposal.

I am wondering why we are going to continue to consider it.

Mr. GRASSLEY. Mr. Chairman, that was just private inspection at export points, is that not correct?

The CHAIRMAN. For our purposes, Mr. Nolan, the administration proposal is already prepared in bill form. Anybody who wants to move for the use of a substitute could do so, however.

Mr. NOLAN. I understand.

The CHAIRMAN. Although there was no dramatic support for the administration's proposal, when the ranking minority member requests discussion of it, we should do so. The purpose of our whole dialog was to determine what the committee supports and what it does not support in order to prepare drafts. The administration bill is already prepared in draft.

Mr. BERGLAND. At some point in time we are going to have to make a decision of which of these three or more options we are going to go for. Am I correct that we are attempting to develop a consensus to instruct the staff to prepare a committee print? Will that committee print carry the three options?

The CHAIRMAN. Since options 2 and 5 are already before us in bill form, the committee print will present option 4. Then we will arrive at a conclusion as to which one we shall markup.

Mr. JEFFORDS. It would be helpful to me to know what kind of duplication is going to result from these various options. That is why I supported the administration proposal. If you have one elevator, and you are shipping to various areas of the country, and you have private inspectors who are going to be worrying about interior shipments, and Federal inspectors about exterior shipments, then I would like to know what kind of duplication this will lead to? This would be helpful to me in making a decision on the options.

The CHAIRMAN. I think it would reduce the duplication at the export points and would, in effect, have one designated inspection service at all the export points. Under item 4 it would be either U.S. Federal grain inspection or inspection by the States under contract with USDA.

I do not think you would have, for example, both the Federal inspection service and the State inspection service at the same export point.

Instead, you would have either direct, original Federal inspection service or a State inspection service certified by the USDA. The State service would take all the points in that State.

Does the gentleman follow me?

Mr. JEFFORDS. I follow you, but I am not so sure that you answered the question.

My question is that say for example you have several tons of grain in New Orleans. Some of it is going to the State of New York, and some is going to France. When you inspect it, do you inspect it when it comes in? Does the private inspector inspect it so that the buyer is sure of it, or do you inspect it in terms of the port of destination?

The CHAIRMAN. The committee has to make a decision as to whether it will permit an inspection service for inland shipment of grains received at export ports, or whether it will just designate the ports for all purposes, export shipments or further inland reshipments, as being export for the purposes of the act, thereby eliminating private inspection at that juncture.

If I were stating my own view, I would have to say that, for simplification purposes, it would be easier to designate ports as localities and all inspection in those ports, whether for processing, for shipping inland, or for export, would be done by the Federal Government and/or State government at that port.

Mr. JEFFORDS. Thank you.

Mr. BOR. Mr. Chairman, in preparing the committee print a question arises with respect to the treatment of the private inspection agencies at interior points. There is the issue of what type of conflict of interest rules to apply.

Is it your thought that the committee would discuss this further before a draft would be prepared on that item?

The CHAIRMAN. I think that is a good suggestion.

The administration bill contains some very rigid conflict of interest requirements.

The staff and the USDA representatives prohibit, for example, any employees or any stockholders of private inspection firms from having any interest in the sale, merchandising, or transportation of grain.

The effect of those conflict of interest requirements, if adopted, would be to virtually eliminate the 41 private inspection firms which are associated with boards of trade or chambers of commerce.

It would seem to me very difficult for those sponsoring agencies to meet the criteria of conflict of interest recommended in the Department's bill.

What counsel is requesting is some indication as to whether the members favor that rigid limitation on private inspection.

Mr. BERGLAND. Mr. Chairman, I for one do not favor that rigid restriction. I think the distinction must be made between a board of trade in which there are members who are buying and other members who are selling.

You have, by its very nature, a competitive institution built in.

If the inspectors providing a service for that board of trade were to tilt their judgment in favor of the buyer, then the sellers, who are also involved as employers, are just going to object obviously. If he biases it the other way, there will be objection from the buyers.

I think, therefore, that that system is inherently self-cleansing.

I frankly find no fault with it, but what I am troubled about is this. In those markets in which there are only buyers or sellers and you do not have the inherent competitive forces at work, then trouble could arise.

Mr. THONE. Would the provision in Senate Joint Resolution 88 be satisfactory to the gentleman?

The CHAIRMAN. What the gentleman is referring to is Senate Joint Resolution 88, which incorporates the standard conflict of interest language of the administration proposal while leaving it to the discretion of the Secretary as to whether the conflict of interest requirements should be implemented in the terms of Senate Joint Resolution 88.

I personally have a little trouble with that approach, if the gentleman will yield. It seems to tell the Secretary that although these are good standards for conflict of interest, he can either put them into effect or not.

If I were the Secretary of Agriculture I would be a little uncomfortable with that kind of a setup.

Then, too, if we establish good, fair standards for conflicts of interest, why should we allow them to be optional? We should not put the Secretary in a situation of ruling on that.

That bill is a 1-year bill, also.

Mr. THONE. I think there is a lot to what the gentleman from Minnesota is saying.

The conflict of interest question has intrigued me from the first day. I have talked to Mr. Moos about it. I have talked to everybody else who has worked on it. It is tough to get an effective handle on it.

Maybe the chairman has some specific suggestions.

The CHAIRMAN. My personal feeling is this: We could give the Secretary of Agriculture, through the grain inspection service, the authority requested in the administration bill to certify inspection agencies as well as inspectors. This would, in effect, license agencies as well as the employees.

Then perhaps we could give the Secretary additional authority to determine whether the competency and ability of the inspection agency are adequate to perform that service, and to verify that the agency is not dominated by economic ownership or other interests which might interfere with its ability to provide inspection service in an objective way. This would leave some latitude.

Frankly, I think that if you have one employee who is connected with some other form of grain merchandising or activity, thus barring the entire agency from licensing, this is a rather strict rule.

Mr. HIGHTOWER. The Melcher-Clark proposal does seem to provide another area of consideration. It provides that it prohibits official inspection personnel from having any financial interest or being employed by firms, and from accepting gratuities.

This does not address itself to ownership or stock participation, or being on a board of exchange, or whatever.

It does prohibit any conflict of interest from the personnel employed by that board of exchange.

Mr. KELLY. It would seem to me that the staff should prepare some sort of a chart to show where these private agencies operate. It might sound like we are saying, "We will cut them off at the points of export, and permit them at the interior points." Unless you know where they are involved, then you do not know whether you are cutting off their toe or everything just below the scalp line.

The CHAIRMAN. Perhaps the U.S. Grain Inspection Service and the staff could give us by Friday some rundown as to where the various agencies are involved at the export points.

Mr. KELLY. Yes; that would be good.

If we are to follow the suggestion of the chairman that we are going to designate, for example, New Orleans as an export point and everything that goes in or out of there would be handled by a single inspection of weighing agency, then we should do that throughout the country. The Great Lakes would be included also.

We should know then what would be left hanging over in the way of private agencies throughout the United States.

The CHAIRMAN. Yes; I think that is good.

Mr. MOOS. We could refer Mr. Kelly to the second page of the memorandum which does give you that.

Mr. KELLY. Is that the one you gave us this morning?

Mr. MOOS. Yes.

The CHAIRMAN. It just says private.

Mr. MOOS. It does not give the whole answer, but it does give an indication of the type of service within the respective States.

The CHAIRMAN. We will try to specify that a little more.

Mr. BEDELL. Could we have a show of hands as to how many people here would favor legislation which would in effect eliminate boards of trade and grain exchanges from having their own inspection organizations, and how many would favor leaving it as it is?

Mr. KELLY. I have now looked at this page and it does not answer my question.

I want to know if you eliminate the private inspectors from designated export points, you would then get 99 percent of them or 10 percent of them?

If you were going to permit the private inspectors to operate at interior points, would there be anybody left? If the answer is no, that you have gotten them at the export points, then I think we should act as though what we are doing when we limit their operation to the interior points, is to effectively wipe out all the 111 private agencies. We should know what we are doing.

The CHAIRMAN. The gentleman is asking how many of these private companies operate exclusively at export points and how many of them have inspection services at both export and interior points.

Mr. KELLY. Yes.

The CHAIRMAN. If company A for example maintains 90 percent of its inspection business at the port and only 10 percent inland, then the gentleman feels that that company would be substantially put out of business by the elimination of private inspection at the export point.

Mr. KELLY. Or, if 90 percent of them only operate or include in their operation a substantial part of their work.

The CHAIRMAN. I think I understand the gentleman's question. I will work with the staff in that regard.

Very quickly is there any sentiment here among the members to limit private inspection to entrepreneurial companies only and to limit boards of trade, chambers of commerce, and grain exchanges? How many are in favor of eliminating boards of trade, chambers of commerce, and grain exchanges?

There does not seem to be overwhelming sentiment to do that.

That indicates that the particular form of conflict of interest in the administration bill would have to be modified.

With the permission of the committee, the Chair will take some liberty in working with the staff and with the ranking minority member in trying to prepare an original committee print that includes some options.

Mr. FITZIAN. Will that be the markup vehicle?

The CHAIRMAN. If the committee so decides.

The next decision will be between the Smith bill and the committee print.

Mr. THONE. The State could not subcontract.

The CHAIRMAN. No.

Finally, we would have the administration bill. Those three vehicles will be reported to the committee; and we will decide Friday, hopefully, which of them will be the primary markup vehicle.

The committee will stand adjourned to meet at 10 o'clock Friday for further consideration.

[Whereupon at 11:45 a.m., the committee adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

FRIDAY, NOVEMBER 7, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to notice in room 1301, Longworth House Office Building, Hon. Thomas S. Foley, chairman, presiding.

Present: Representatives Vigorito, Jones of Tennessee, Bergland, Rose, Breckinridge, Nolan, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, Wampler, Sebelius, Thone, Jeffords, Grassley, and Hagedorn.

Staff present: Robert M. Bor, counsel; Steve Allen, staff consultant; Gene Moos, staff analyst; Glenda Temple, staff assistant.

A quorum not being present, the meeting was adjourned.

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U.S. GRAIN STANDARDS ACT OF 1976

MONDAY, NOVEMBER 10, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:12 a.m. pursuant to notice in room 1301 Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, de la Garza, Melcher, Bowen, Weaver, Baldus, Krebs, Hightower, Bedell, McHugh, English, Jenrette, Sebelius, Thone, Grassley, Hagedorn, and Moore.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; Gene Moos, staff analyst; Glenda Temple, staff assistant.

A quorum not being present, the meeting was adjourned.

ATTN: THE BUREAU OF REVENUE

STOL IN GERMANIA "WACHOL"

U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF PLANT INDUSTRY
WASHINGTON, D. C.

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, NOVEMBER 11, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:15 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, Vigorito, Jones of Tennessee, Melcher, Bergland, Bowen, Rose, Litton, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, English, Fithian, Jenrette, D'Amours, Wampler, Sebelius, Thone, Symms, Johnson, Madigan, Peyser, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor, counsel; William A. Imhof and John E. Hogan, associate counsels; Gene Moos, staff analyst; Steve Allen, staff consultant; L. T. Easley, press assistant; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order. I am informed by the clerk that a quorum is present.

The committee meets for further consideration of grain legislation.

The staff has prepared and placed before each member a committee print of about 25 pages, which contains an insert for page 9 as well. There will also be some criminal provisions which have not yet been incorporated in the committee print.

Is that correct, Mr. Bor?

Mr. Bor. That is right, sir. There are some additional pages which contain criminal provisions which are supplements to the first installment. That has been passed around.

A copy of that should also be on the members' desks.

The CHAIRMAN. The staff has also prepared a section-by-section analysis of the committee print that is also before each member.

Perhaps we can ask counsel to proceed by briefly going through the section-by-section analysis.

The Chair advises members that what we hope to do today is to obtain the committee's judgment as to whether we should take up the administration bill, the Smith bill, or the committee print as the principal vehicle for markup.

Of course, as I said before, that does not constitute any final or conclusive action. At any stage of the proceedings, it would be in order for members to move to amend whatever we take up or to move a substitute for the markup vehicle.

However, judging from our past opinions as expressed in straw vote, the administration's proposal, the Smith bill, and the commit-

tee print are the three bills on which members wanted some additional consideration. The committee print is a product of the staff which attempts to incorporate members' general views.

The administration bill, of course, reflects both the Administration's recommendations and an approach which largely retains private inspection agencies at export ports with increased supervision while providing such addition features as for licensing of inspection agencies, registration of firms involved in grain trading, and provision for limited original inspection by the Federal Government.

H.R. 8764 by Mr. Smith would establish Federal inspection at the export points as well as Federal inspection at the inland points with the option that the Secretary could contract with State inspection agencies at interior points. There are a number of differences between the Smith bill and the administration bill.

At this point, without objection, I would like the staff to go over the principal features of the committee print.

Mr. MELCHER. I have a question, Mr. Chairman.

The CHAIRMAN. Mr. Melcher.

Mr. MELCHER. If the GAO report is being awaited by the Senate prior to their marking up a bill, have we decided firmly that we want to mark up a bill here without the advantage of whatever the GAO report might demonstrate and then just pass it over to the Senate not to be acted upon until sometime next year?

Has the committee firmly decided that is the course we would follow?

The CHAIRMAN. I don't think the committee has firmly decided anything. I say to the gentleman from Montana, that this is something that remains subject to review by the committee.

As I understand the committee's feeling last week, it did not necessarily intend to pass a bill at this time. Quite frankly, to get a bill onto the floor by other than suspension would require an exception to the Rules Committee's action closing down the rules.

In order to obtain an exception, the Speaker would have to make a request. Moreover, the standard question asked by the Rules Committee when considering such emergency requests is whether it is possible for this legislation to become law in this session of Congress.

If there is little or no possibility, the Rules Committee is reluctant to grant a rule for consideration.

Therefore, as I said to the press and to the members, I do not anticipate we would report a permanent type bill and get it to the floor in this session of Congress.

However, it seems to me that we could accomplish two things by proceeding with permanent concepts:

We could judge whether we wanted to report a temporary bill, similar to Senate Joint Resolution 88, which would be consistent with our judgment on the permanent legislation; and we would give some indication to the administration, the Senate, the industry, and the agricultural sectors involved, what our current thinking was about permanent legislation.

Obviously if the GAO report contains conclusions on recommendations that radically alter our judgment, it would be easy to simply not ask the Rules Committee for a rule and to, instead, bring the bill back for further consideration.

At least that was my own judgment. Subject to any action the committee wants to take, it would be useful to proceed as far as we could with the drafting of permanent legislation.

Mr. MELCHER. I thank the chairman.

The CHAIRMAN. The committee has not reached any conclusions which cannot be altered.

Mr. BERGLAND. Should we attempt at this time to narrow down the three options that appear to be open to us dealing with the subject of inspection authority?

The CHAIRMAN. Yes, the Chair feels that would clearly be the most orderly procedure. Again, however, that is subject to the wishes of the committee.

We should select one of these as our principal markup vehicle, rather than try to mark up three or four bills at one time and then proceed with the markup.

The selection of a markup vehicle does not commit the committee to anything or everything contained in it. We can always amend the entire character of the markup instrument.

It would seem to be more sensible to consider something closer to the committee's desires than to take something further from what it wants and then amend it more radically.

Mr. BERGLAND. The so-called committee print embodies three approaches which have been generally alluded to in the area of the inspection authority. Is that correct? Or is the committee print narrowed down to specific proposals?

The CHAIRMAN. It is narrowed down to a general package of proposals with some additional alternative options expressed as options within the committee print.

The staff and the Chair were unable to clearly identify which direction the committee wanted to take regarding some of the finer points. These more controversial areas are dealt with in the various options.

One example is weighing. The committee print contains three options including the undertaking of a study by the Department, making false weighing a Federal criminal offense without allowing the USDA authority to establish standards or procedures for it, and, finally, making false weighing a criminal offense while giving the Secretary the right to verify the accuracy of scales and to regulate weighing procedures, equipment, and so on. These three options reflect a progression of regulatory involvement; and the committee must decide which of the approaches, if any, is best.

However, the basic focus of the committee print is to establish Federal inspection with the option of contracting with State inspection agencies at export ports while retaining at inland ports the possibility for the coexistence of original private inspection agencies, original State inspection agencies, and Federal inspection when necessary, while strengthening supervision.

The Smith bill for all practical purposes, can be described as an all-public system. The administration bill is an all-private system with some original Federal inspection possible when needed. This involves mixed public and private.

The committee print, on the other hand, is a combination of all Federal, with State contracting at the export level and private, State, and Federal inspection at the interior.

Mr. THONE. Except in effect the administration bill with its conflict of interest—

The CHAIRMAN. That particular provision of the administration bill, Mr. Thone, seems to eliminate certain kinds of private inspection agencies unless they reorganize some of their procedures. It would be difficult, for instance, for chambers of commerce and boards of trade to retain sponsorship of inspection agencies.

The committee print has a suggested approach to the conflict of interest which, in effect, states that the Secretary shall determine that no officially designated inspection agency shall, by its own management, have any conflict of interest problems which would interfere with objective inspection. It allows the Secretary to make those determinations.

However, it does not spell out anything in a detailed way.

Mr. BERGLAND. It appears the committee print perhaps represents what may be a consensus of the committee thinking and it would be an appropriate vehicle on which to consider these matters.

I therefore move that the committee print be considered as a vehicle and open for amendment.

The CHAIRMAN. Before I put up that motion, all members are reminded because we adopt a markup vehicle, it does not mean we have to take any provision as positive.

The gentleman moves the committee print be made the markup vehicle and draft for consideration.

Mr. FITHIAN. It is with a great deal of reluctance I suggest an alternate approach because of my esteem for the gentleman from Minnesota.

I think perhaps it would be appropriate to discuss briefly the two different tangents upon which the committee will embark, depending upon which markup vehicle we use.

While it is quite correct that no markup vehicle precludes amendments, change, and discussion, I think it does perhaps cause the committee to at least discuss those elements that are in the markup vehicle and either reject them or accept them.

One of the differences, as I perceive, between the markup and the Smith bill is that in many instances the committee markup provides more for a study of the situation in the case of grain standards, provides for a study of adulteration and contamination, whereas the Smith bill rather precisely puts us to the test in this committee of discussing what we would do about this specifically.

Are we going to legislate dockage for insertion of foreign material?

Are we going to beef up the criminal statutes as the Smith bill provides?

Are we going to examine carefully some of the areas that are in the Smith bill which are not in the committee print?

With all due respect I would suggest that it is easier for the committee to say in the various points as we discuss the Smith bill that that goes beyond what we want to do and modify it than it would be to sort of start erecting or constructing into the committee print or whatever

becomes the vehicle for markup some of the concepts which are in the Smith bill.

I think the Smith bill was drawn very, very carefully. It clearly will not represent everybody's thinking here, and can, would, and should be modified as we come to those particular points for which there is not support, majority support, in the committee.

However, I think we might have a more meaningful and certainly a more thorough discussion if we were to use the Smith bill as the markup vehicle because think it is true, is it not, that it is easier to modify away from than it is to build anew in committee discussions? At least that has been my experience in my brief time here.

Therefore, I would urge that we do two things:

First, that we have counsel, as you started to do some 20 minutes ago, summarize for us the section-by-section portion of the committee print is in error.

If that is the case, then I will support the Bergland motion at that time.

I would respectfully request now that prior to voting on this motion that we have the committee counsel summarize for us so that everyone will be brought up-to-date with what it is we are about to embark upon as a vehicle, and then pending that discussion by counsel make the decision, if that is the will of the committee, between the Smith bill and the committee print.

The CHAIRMAN. If the gentleman will yield, I think there are any number of members who want to go through the section-by-section analysis; and we should do so unless the members have read this and know exactly what is in the committee print without some brief discussion.

At that juncture the gentleman could offer any substitute he wishes, the Smith bill, for example. If that fails somebody else can move to substitute the administration bill, and so on until we arrive at a consensus.

Without objection, will you, Mr. Moos, Mr. Bor, and Mr. Allen, proceed with the section-by-section analysis as expeditiously as possible.

Mr. THONE. Some of us here, Mr. Chairman—not everybody present—have gone through this bill now about three, four or five times.

I would second what you say about expediting this.

I agree with Mr. Fithian that we should know generally what is in the committee print. However, I would hope it would not be a laborious explanation which most of us have had, as the staff knows, four or five times already.

The CHAIRMAN. Mr. Bor?

Mr. BOR. Before we start, Mr. Chairman, I would like to introduce to the committee a new associate counsel who has just joined our staff and who I am very proud to introduce. He is a distinguished alumnus of the same institution from which I graduated, the General Counsel's Office in the Department of Agriculture, where he was a director of the division in charge of appellate litigation.

He served a number of years in the Department. He has been in private practice, and he also worked a while with the Department of Defense. I am sure he will be of great assistance to the members of the committee and also to counsel and associate counsel to the staff. His name is Tony Imhof.

Mr. IMHOF. Good morning, Mr. Chairman and members.

The CHAIRMAN. We are very happy to welcome you to the staff, I am sure all members will look forward to becoming better acquainted with you.

Mr. IMHOF. Thank you, Mr. Chairman.

The CHAIRMAN. You might want to take your place up at the table here, Mr. Imhof.

Proceed, Mr. Bor, as expeditiously as possible without rushing.

Mr. BOR. The first section is the title of the bill.

The second section contains changes in definition for the purpose of the act.

One of the important change in definition is in respect to the term official inspection—to make it clear that it covers the original inspection, reinspection, appeal inspection, and also provides authority to determine the condition of carriers or containers for grain insofar as it may affect the quality or condition of such grain.

This is to amplify a provision which is currently in the law, Mr. Chairman and members.

Section three is a critical section of the bill. This section provides, first of all, that inspection at export port locations would be carried out by the Department of Agriculture or a State under a cooperative agreement with the Department of Agriculture.

Official inspection at other locations would be made only by State agencies and other persons who are designated by the Department of Agriculture.

The CHAIRMAN. Could other persons mean private inspectors?

Mr. BOR. It could include firms which could be private business enterprises. They could be individual proprietorships, boards of trade, chambers of commerce, and traditional private-type inspection services which have been used for a number of years in this field.

The distinction, however, is that you can operate one of these businesses only if you have been officially designated by the Department of Agriculture, and the section sets out what the criteria are for the purpose of designation.

One of the criteria is that you must not have a conflict of interest which would be in violation of the provisions of the bill.

At the top of page 2 of the summary which has been passed around there is a brief description of what is considered to be an improper conflict of interest. This is largely left up to the determination of the Secretary. It provides that no official inspection agency or any member, officer, employee or stockholder shall have such a conflict of interest in any other business as to jeopardize the integrity of its inspection service.

This, Mr. Chairman, differs from the provisions of the administration bill which would have ruled out completely the use of chambers of commerce and boards of trade because of the fact they have members who also have a financial interest in grain merchandising firms or grain warehousing firms.

The theory here is that if you have a chamber of commerce or board of trade with a proper balance of buyers and sellers that while there would be a conflict of interest, it might well be that the conflict of interest would not jeopardize the integrity of the inspection service because of the fact that the buyer is looking over the shoulders of the sellers and the sellers are looking over the shoulders of the buyers.

However, the Secretary might determine that in particular cases, because of a preponderance of one or the other, or because of other special factors, there was such a conflict of interest that the organization would not be eligible for designation.

We have a substitute page 3 for the committee print which is being passed out now which you might add to your committee print.

Designations would be for a period of up to 3 years and could be renewed. The designated agency would have to pay fees to the Department of Agriculture to cover one-half of the administrative and supervisory expenses. The balance of the supervisory and administrative expenses would be borne by the Federal Government.

This differs from the provisions of the administration bill where all of the supervisory costs would be paid by fees received from the designated agencies. The costs would, of course, be passed on in the form of user fees to the people who make use of these services.

The Secretary would have authority to provide for Federal inspection at times when there was not a designated agency available, a private inspection service or a State agency available, to perform the service. That would be done on an interim basis until a State or private enterprise is qualified to perform the function.

Another series of sections revises the provisions that deal with official inspection personnel and provide specific authority for the Department to use its employees to perform inspection and reinspection and appeal functions and also to monitor in foreign ports grain inspected under the act.

This provision for monitoring is contained in the administration bill and also contained in Senate Joint Resolution 88 and the Smith bill. The language differs somewhat but the intent is pretty much the same.

This section also authorizes the Secretary to hire official inspection personnel without regard to civil service requirements if they are currently licensed under the act so it would enable the Federal Government quickly to get into the picture as it needs to at locations where it does not have official personnel available to carry out its responsibilities.

The provision for revocation of licenses has been improved upon from the present law.

As the chairman mentioned, there are two options in this committee print dealing with weighing. The first is an option which would require the Secretary to conduct a study regarding weighing procedures and report back to the Agriculture Committee not later than 6 months after the effective date of the act with recommendations for the strengthening of the service.

The other option provides for the Secretary to prescribe procedures for weighing and certification of weight and to supervise the weighing being conducted on grain moved in interstate and foreign commerce.

It also provides that these activities can be carried out through cooperative agreements with the State.

This was largely drawn from Senate Joint Resolution 88 which authorizes this same type of activity but for only a 1-year period. This option provides it on a permanent basis.

A similar type provision is contained in the Smith bill.

There is another provision which relates to weighing which should be considered in this context. It will be discussed in more detail a little later in connection with the criminal provisions of the act.

If you ask for a study and do not give the Secretary immediate authority to prescribe weighing procedures, there still remains a question as to whether you want to make it a Federal crime for falsification of weights. You could, for example, provide for a study and at the same time strengthen the Criminal Code by providing that it is a Federal crime to engage in intentional falsification of weights.

Another section deals with registration of firms that are engaged in the business of buying grain for sale and in the business of handling, weighing, or transporting of grain.

This provision would require these firms, grain merchandisers essentially, to register with the Secretary of Agriculture. It provides that if you prove to be a bad actor by having violated the provisions of the act, your registration could be suspended or revoked. That would terminate your ability to engage in this work.

Mr. BERGLAND. Is it proper to ask questions as we go through this? The CHAIRMAN. Certainly.

Mr. BERGLAND. What about an instance where an employee of a firm is engaged in an illegal activity for which he is subsequently convicted? Is that employer then in trouble under this provision? This employee is acting without the employer's knowledge. Can an employee put the parent company in trouble under this section?

The point is that some of these outfits have employees working in remote stations with little or no supervision. These people can get a company in big trouble very fast.

Mr. BOR. The answer to that depends on the extent to which the employee has a position of responsibility. If your employee, for example, holds a management position, then I would imagine that would be imputed to the grain firm.

If your employee is a subordinate official and it is not within the knowledge of the responsible officials of the firm, the answer then would be different.

You will notice that in the case of some of the criminal indictments, they were brought not merely against the employee but also against the firms and the firms were charged with criminal offenses. I think the answer again would be pretty much the same as would be the case in the bringing of a criminal indictment.

This registration section is contained in Senate Joint Resolution 88 as a permanent feature and not merely under the section which gives the Secretary 1 year interim authority. It is also contained in the Smith bill. It is not contained in the administration proposals.

There are some slight differences between the Smith bill and the Senate Joint Resolution 88 in respect to registration. The Smith bill has stricter provisions than Senate Joint Resolution 88 on this particular feature.

Mr. BALDUS. Would you identify where you are? I have lost you.

Mr. BOR. I am at the bottom of page 2 of the section-by-section analysis.

Mr. BALDUS. All right.

Mr. BOR. Going now to page 3.

The next provision is entitled refusal of inspection and civil penalties. This relates to additional authority which would be given the Secretary whereby it can take administrative sanctions against firms which have violated the provisions of the act.

For example, it strengthens the provisions of the current act which allow the Secretary to refuse official inspection to a firm which has violated the act.

Second: It would allow the Secretary to impose civil penalties of up to \$50,000 upon any person who has violated the provisions of the act.

The provisions as to civil penalties could be an alternative to criminal sanctions or it could be in addition to criminal sanctions.

These civil penalties could be imposed only after a hearing had been provided to the person against whom these were to be assessed.

The next section deal with recordkeeping. It strengthens the record keeping requirements of the act, and specifically authorizes USDA officials to have access to grain elevators or other facilities for the handling of grain so that they can better carry out their investigative and auditing functions.

The next section is drawn from Senate Joint Resolution 88 and provides for a study to be conducted by the Secretary concerning contamination, transportation, and handling of agricultural products and for submission of a report within 1 year after the effective date of the act.

As pointed out in Senate Joint Resolution 88, it points out all agricultural products and is not limited to grain.

Following that we have a section which provides for a study of grain standards. This would require the Secretary to conduct a study of the adequacy of grain standards, make such changes in the standards as the Secretary determines necessary, and within 6 months submit a report to Congress setting forth his findings.

This is also drawn from Senate Joint Resolution 88, a bill passed and adopted by the Senate.

The Smith bill has stronger provisions and mandates certain changes which would have to be made in the grain standards by the Secretary of Agriculture.

Following that there is a section which provides for reports of complaints by the Secretary of Agriculture to the agriculture committees of the Congress, complaints which relate to grain which is shipped overseas to foreign buyers. The purpose of this is to give the committees a better understanding of the problem areas which are being addressed to the Secretary's attention with respect to grain shipped overseas.

There are a few sections which relate to the criminal provisions. They are designed to strengthen the provisions currently in the code which deal with violations of the act.

First of all, a change is made in the U.S. Criminal Code to extend the protection of the code against assault, intimidation, and death to any employee of the USDA assigned to perform investigations, inspections or law enforcement functions.

This is a pretty important provision, Mr. Chairman. At the moment it is not a Federal crime to assault, intimidate, or kill any of the Department officials engaged in these activities. It is a Federal crime if this occurs to employees of other Departments of the Govern-

ment but not to the officials and employees of the Department of Agriculture.

This statute has grown like topsy throughout the years.

Earlier this year the Agriculture Department has suggested this change to both Houses of Congress. Senate Joint Resolution 88 went part way in meeting the request. The way the committee print has been drafted is to extend the protection not merely to investigative officials and inspection personnel dealing with the Grain Inspection Act but also if such personnel are carrying out functions under other acts of the Department.

The committee print also strengthens the penalties for certain prohibited acts under the Grain Standards Act. At the moment violations are misdemeanors punishable by slight penalties. The more objectionable violations are taken out of the ambit of the Grain Standards Act and are made subject to the general provisions of the Criminal Code so that offenses such as bribery, intimidation, assault, and death are subject to felony provisions of the Criminal Code and not to the misdemeanor provisions of the Grain Standards Act.

The other offenses are set out in a fashion so that you have slightly more stringent penalties for second and subsequent offenses than is now the case.

Mr. KREBS. When you say slightly more stringent, first of all, what do you mean by slightly, and if so, why slightly?

Mr. BOR. The other offenses are characterized as misdemeanors. The current Grain Standards Act provides for a small fine for violations.

What this bill does is to increase the penalty so that the fine would be a larger amount and there could be imprisonment for a period of up to a year.

Mr. KREBS. If I may pursue this, Mr. Chairman.

The CHAIRMAN. Yes, but the idea here is to touch on topics. Each section is subject to amendment and further discussion later.

Mr. KREBS. I withdraw my request.

Mr. THONE. Most of the violations of section 13 can be made misdemeanors? I understand what you said generally.

Mr. BOR. All of them are now misdemeanors.

Mr. THONE. I understand that.

Mr. BOR. Three of them would become felonies by being made subject to the general Criminal Code. The balance would continue to be misdemeanors but subject to more stringent fines and prison terms.

Mr. THONE. Why keep them misdemeanors and why not make them all felonies? Is it punitive?

Mr. BOR. I guess it is a matter of judgment. Strangely enough, the bills I looked at, with the exception of Senate Joint Resolution 88, continue to characterize those offenses as misdemeanors.

I might mention Senate Joint Resolution 88 has restructured criminal provisions so as to provide for different levels of fines dependent on the nature of culpability and has drafted them after the provisions of the revised Criminal Code as contained in a bill which is before the Judiciary Committees of both Houses of Congress.

We thought it would be premature to borrow those provisions before the Judiciary Committees had had an opportunity to work their will on those bills.

We also asked the advice of the Department of Justice. Their advice was the same—they thought it was premature.

The CHAIRMAN. If I may interrupt, I should like to mention that the Judiciary Committee is considering new ways of handling culpability in criminal offenses.

Under the committee print we will, therefore, keep the present structure of the criminal law and raise misdemeanors to felonies. If the committees later passes those bills, we can then consider that in this section.

However, if we were to take it up now when the Judiciary Committee has not acted, we would have the only situation in the Criminal Code where culpability would be involved. It would exist nowhere else in the Criminal Code.

Mr. BALDUS. On that point, then, and relating to the question Mr. Bergland asked, we have several examples where following the beneficiary of a misdeed—in other words, if an inspector responded to bribery he would be the beneficiary of that. The company he worked for might actually be the losers.

Is it anywhere considered, maybe triple jeopardy, on the amount of gain that either the individual or the company were to get from this? Is that being considered anywhere in here so it is not simply a matter of a set fine because to a large company that is not very much?

The CHAIRMAN. The civil provisions provide for up to \$50,000 in civil penalties after a hearing for every violation of the act. Therefore, it would be possible to proceed against an employee under the criminal penalty. If his actions were in concert with the company and there were 10 different offenses, the company could be fined up to \$500,000.

Mr. JOHNSON. For each offense?

The CHAIRMAN. Yes.

Mr. BALDUS. On a shipload that might be one fine.

Mr. CHAIRMAN. What the bill does is to extend the felony offenses to cover any bribery action under the statute. My personal experience suggests that corporate officers do not like to be indicted for felony offenses.

If there were absolute culpability on the part of a company as a conspirator or coconspirator and all the officers had knowledge of it, they would be subject to prosecution.

What the committee print also does is to make private inspection agency personnel subject to prosecution when they are conducting inspection as public officials.

Normally you cannot proceed against an individual for bribery unless he holds a public office. However, for the purpose of this act, private inspectors, samples, and so on, would be considered within the scope of the bribery statute.

I do not want to cut off the discussion, but we could easily spend all day talking about these particular sections.

What we are trying to do here is to get an overview as to whether or not we should amend the statute. We will discuss it in greater detail later.

Mr. BOR. I would like to reinforce what the Chairman has said. There is a series of actions that can be taken against malfactors—one is criminal action; another is civil penalties up to \$50,000 for each offense.

In addition, a firm can be refused official inspection so that it has difficulty operating in interstate and foreign commerce.

Second, if you adopt the registration provisions it could mean you could not engage in the business of merchandising grain if the offense was great enough.

There is a section in the bill which would authorize the Secretary to require installation of sampling and monitoring equipment at grain elevators and would also give him the authority to improve the condition of carriers and containers for transporting or storing grain.

There is an authorization for appropriations.

The final provision would make the bill effective 30 days after enactment but provide for phasing out of existence over a period of not to exceed 2 years, agencies which could not qualify under the provisions of this bill.

The CHAIRMAN. Are there any questions at this point, gentlemen?

Again, I have no wish to cut off discussion of general questions, but as to fine tuning, I feel this should occur after we have chosen a vehicle for markup.

Counsel, does the committee print incorporate any features of the administration bill, the Smith bill, or Senate Joint Resolution 88?

Mr. BOR. Yes.

The CHAIRMAN. Does the gentleman from Indiana want to move to substitute the Smith bill?

Mr. FITHIAN. If it is appropriate at this time, Mr. Chairman, I would renew my suggestion that in many ways the cohesion of the Smith bill and the rather broader proliferation of the committee print would make it much more expeditious and we would take up more topics, I think, in a meaningful way if we use the Smith bill for the markup vehicle.

I move that as a substitute motion.

The CHAIRMAN. The gentleman from Indiana moves that the Smith bill, H.R. 8764, be substituted as the committee markup vehicle.

Mr. POAGE. I am not objecting to this from a parliamentary standpoint. We should use our own, however, rather than the Smith bill as the basis of consideration at least.

I feel we should follow something we at least know rather than going in a different direction from what the committee voted. It seems to me this would be going at it backwards. We could do a whole lot better to proceed to mark up our own bill rather than marking up a bill which we felt was not in line with what we wanted.

The CHAIRMAN. What I would like to do today, if possible, is to at least reach some conclusion as to which of these bills we will use for markup.

Although the committee last week expressed some support for both the Smith bill and the administration bill, there appeared to be even greater support for the concept put forth in the committee print.

We now have three bills before us, each of which has gained substantial support.

If the gentleman from Indiana does not object, we will proceed with his motion.

If that is carried the Chair will bend the rules a bit if someone else wants to suggest that we substitute the administration bill.

Without objection, we will proceed to decide whether to use the Smith bill for the markup vehicle. Again, let me emphasize that this

does not tie anybody to any provisions of any of these proposals but is merely a means of arriving at something which reflects our thinking.

Mr. BEDELL. I do not want to cause difficulty, but I don't really know what the differences are, whether we mark up from the committee print or the Smith bill.

The CHAIRMAN. It would seem to me that to proceed with markup of a bill containing very few features on which we agree would unnecessarily overload the amendment process. However, you pick whatever you want.

If you think the Smith bill is closest to where you want to go, I would vote for the Smith bill.

Mr. BEDELL. Thank you.

The CHAIRMAN. On the other hand, if you think the committee print is the closest to where you want to go, it would be appropriate to make that the markup vehicle.

This is merely an attempt to avoid more radical markup efforts.

Mr. FITHIAN. Just one moment, Mr. Chairman.

I think we ought to keep in mind that in numerous places the committee print simply asks or suggests that the Secretary of Agriculture conduct some kind of study and report back to us.

The CHAIRMAN. Yes; that is true.

Mr. FITHIAN. This clearly negates responsibility for about a year or a year and a half hence to get at the problems that all of us clearly understand today exist in the grain inspection system.

If we want to go that way as a committee that is fine, but I think it is clear that in case after case in the committee print it asks or suggests only that the Secretary of Agriculture conduct a study, or do this or that. It does not define the standards. It does not come to grips with the problems facing this country today.

If the committee wishes to confront those head on and make the kind of responsible decision we should, then I think we have to divert from the committee print and philosophy of the committee print.

The CHAIRMAN. Of course, you would have to deviate from any markup vehicle in order to change any part of it.

For example, if you like the specifics of the Smith bill but do not like the Federal inspection at certain points, you might propose the Smith bill and then make a change.

The gentleman can always offer a substitute. Every time the committee print calls for a study, he could offer a specific amendment to change that.

I am forced to reiterate that in adopting one of these vehicles no one is tied to whatever it does. We are merely trying to expedite this procedure.

Mr. POAGE. I would like to comment on that matter of these studies. Most of the members know more about grain than I do, but I have attended all of our meetings. I know many of the members have not done that.

I do not understand why there is any problem here. I think we have to have some studies before we can make intelligent decisions on a number of these questions. Personally there is a lot to be understood about this matter. To me it seems a good idea to have studies regarding some of these problems.

The CHAIRMAN. All those in favor of the Fithian substitute that we use as a markup vehicle the provisions of H.R. 8764, by Mr. Smith of Iowa and others, raise your right hands.

The CLERK. Five.

Mr. KREBS. Six.

The CHAIRMAN. Those opposed?

The CLERK. Eleven.

The CHAIRMAN. There being 6 ayes and 11 noes, the substitute is not agreed to.

Mr. THONE. I move the previous question, Mr. Chairman.

The CHAIRMAN. Does anybody want to move to substitute the administration bill?

[No response.]

The CHAIRMAN. If not, then the question occurs on the motion of Mr. Bergland, to use the committee print as the markup vehicle for consideration.

All those in favor raise your right hands.

The CLERK. Eleven.

The CHAIRMAN. Opposed raise your right hands.

The CLERK. None.

Mr. KELLY. I would like to be recorded as voting in the affirmative.

The CHAIRMAN. Did you include Judge Kelly in that?

The CLERK. I shall, Mr. Chairman.

The CHAIRMAN. All right, we shall use the committee print as the markup vehicle.

The intention of the Chair at subsequent meetings of the committee will be to proceed to read the committee print for markup without foreclosing on amendments at any point.

Without objection, the committee print will be considered before the committee and open for amendment.

Mr. BERGLAND. Was it your intention we proceed with markup this morning?

The CHAIRMAN. Again I shall listen to the committee's wishes.

Would the members prefer to adjourn the meeting at this point in order to give ourselves an opportunity to study the committee print a little more thoroughly before proceeding with the markup?

Mr. BERGLAND. At the risk of causing a problem when we have a quorum, we have had such difficulty, this member would like overnight to read this committee print in detail. I need time to prepare amendments. I am not ready at this time, Mr. Chairman.

I would hope we can do it tomorrow.

The CHAIRMAN. Tomorrow we have subcommittees meeting.

The Chair, therefore, would intend to call the next meeting on this subject Thursday, at 10 o'clock, so as not to interfere with subcommittee work.

Mr. POAGE. I have no objection to Mr. Bergland's request.

I wonder, while we are in session, we can do this—unfortunately the other day when we met with members of the Department on this matter I had a subcommittee hearing and did not hear all of that discussion.

Frankly, I was greatly disturbed by the discussion which took place, the portion I heard.

It seems to me we do not need any bill or any inspection service. I say this in the hope somebody who knows these things will give me a real reason for an inspection service at the ports.

The CHAIRMAN. If the gentleman would yield.

Mr. POAGE. Yes. This didn't bind anybody, didn't guarantee anything, didn't do a thing except make somebody think the U.S. Government had inspected and approved this grain when we had done nothing.

Mr. THONE. So this is clear, Mr. Poage, you said Department officials. You referred to the briefing we got from GAO.

Mr. POAGE. That is correct. I did not hear all of it.

I would just like to carry that a little further.

The CHAIRMAN. I think it is a good suggestion. I wonder whether the committee would have any objection to using the remaining 45 minutes for general discussion of any of these matters which are presently before us, without proceeding to read the bill until Thursday morning, at which time we shall go over it section by section for markup.

The committee will not adjourn at this point with the understanding that no members will be disadvantaged if they have other pressing business.

We shall proceed on that ground. We will continue with discussion by Mr. Poage.

Is there any objection?

[No response.]

The CHAIRMAN. When we met with the General Accounting Office and Department officials earlier, the question came up, of what services the grain inspection system provided.

As I recall, the Grain Standards Act began in its present form in 1916. Is that correct? We have Mr. Galliard and Mrs. Prokop here today to help us out.

Mr. GALLIART. Yes.

The CHAIRMAN. Apparently that legislation came about because of a demand within the industry for an official umpire of sorts to provide grain inspection.

As I recall, it was stated that many of our purchasers abroad are upset when there is a dispute over the grade, weight, or quantity of grain, and, further, that the United States does not have the authority to provide any adjustments or arbitration of those complaints. Having certified grain inspection, it does not then, in the sense of a private company, stand behind its inspection service.

That fact prompted Mr. Poage's question—why not let the buyers and sellers deal with one another without involving the good faith and credibility of the Federal Government in transactions in which it is unable to back up what it does through arbitration in the event of disputes?

I recognize the gentleman from Texas.

Mr. POAGE. The Chairman has expressed my concern better than I can express it.

Are we achieving anything with this inspection at export ports? If so, what is it? Is it worth anything when it gets to the point of destination?

I understand that grain, unlike cotton, does not go in a closed bundle and necessarily arrive in the same shape it left the port. I can understand why it is impossible to say that this will arrive, the number of pounds that will be in it when it arrives, how much dirt will be in it when it arrives, the number of kernels that will be cracked when it arrives.

I can understand that the inspector cannot at the American port certify what this grain will look like in Tokyo or in Rotterdam.

If we put an inspection on that and say this grain is of a certain quality and of a certain weight when it is shipped—I don't know they certify as to the weight, but they do as to the quality—why say what the quality is when you have no way in the world of knowing whether it will remain that quality during the voyage, and that when it arrives your certificate, it seems to me, will be bound to create some problem and if it has any weight at all it will influence the buyer.

Yet the U.S. Government puts the Seal of the Government there that this was so and so when it left New Orleans. Why put it there? That is the question that comes to my mind. Why put it there?

It will not be delivered on that basis. Nobody will receive it simply on the basis that the United States said it was a certain quality when it left New Orleans.

Of course fraud can be practiced. I don't care whether it is American or Japanese or whatever. If you are going to ship that several thousand miles and have an opportunity to lower the quality there will be a problem, and unless there is a way of checking up on it there are people who will do it. However, the United States has lost all of its control over that grain.

We ship cotton the same way. The U.S. grades the cotton. However, the cotton is in a bale. It would be obvious if it had been opened. You could not change the quality of the cotton in the bale, anyway, so the American grading of cotton does carry some validity.

The CHAIRMAN. In the event there is some complaint about cotton grading, the purchasers have to obtain whatever recourse is available to them through the seller. Is that right?

Mr. POAGE. Yes, through the Board of Arbitration, and the Cotton Shippers Association in the United States has arbitration boards in many of the places to which they ship cotton, that is in Western Europe and in Japan. There are boards available made up of buyers and sellers who will arbitrate.

We always ship cotton with the understanding it is subject to arbitration.

The CHAIRMAN. Is that not the essential difference? With grain inspection the law provides that, where it is sold by grade, grain must have the final inspection certificate. However, the contract arrangements provide that the inspection shall be final if it is graded at point of shipment. Am I correct?

Mr. POAGE. Yes.

The CHAIRMAN. There is a different contractual arrangement between the shipment of cotton and the shipment of wheat or grains of any kind. The trade could provide for boards of arbitration similar to those of the cotton shippers.

At any rate, the United States has no way of responding if those arbitrations are not honored.

MR. POAGE. That is right. The only problem is that the company loses its standing among the people with whom it does business and it ultimately goes out of business if it gets that kind of reputation.

I am asking again why should the United States subject itself to the indignity of having its inspections so often and so often found to be wrong?

I am not saying they are wrong as of the time they were shipped, but I say the opportunity does exist in the shipment of grain to change the character of the grain before it arrives at the final destination, and that that opportunity is taken advantage of from time to time.

It leaves the United States open to the criticism that our Government has issued certificates which are false on their face. I do not see any advantage that the Government gains. I see a great deal of disadvantage to our country in issuing that kind of certificate. I can see no reason why we should not say to the trade:

If you want to buy this you can send your own inspectors here and we will make a place for you at the ports where you can inspect it yourself.

The buyer, then, can inspect if he wants to at the American port. Then your transaction would be final at the time at left the American port. Whatever happened to it from then on is up to the buyer.

Why should be continue to embarrass the U.S. Government?

MR. BALDUS. Is the question you pose that everything is all right so we ought not to do anything—or is it that there is nothing we can do about it?

The basic understanding is that we are in a situation where companies deal with countries. Therefore it is not that same kind of contractual arrangement you talk about.

We are also in a situation where our country is having it said that if we have a choice we prefer not to deal with grain coming from your country because the inspection system is not valid enough. Therefore, they discount the prices at the port. That is important to me and my district. That is the compelling reason for our bringing our standards up to Canadian standards, Australian standards, and European standards. If we do not do that it is our fault. It is our responsibility to do that.

As far as damage occurring on carriers, there are ways of telling if damage occurred on a carrier. If it picked up water that is apparent. I don't think very many ships stop and pick up a lot of dirt on an island en route. If so that would be apparent.

I think some damage might be anticipated by a carrier. However, when that is so it is identifiable if an honest way is put forth to find it.

MR. POAGE. If you have an entire shipload which moves from New Orleans to Rotterdam, for example, you would be undoubtedly correct as to identifying this and there is not much opportunity to adulterate the grain.

However, if you have a shipment going on the west coast of South America, makes one delivery at Lima, another to Santiago, another to Valparaiso, there is no way in the world of knowing how that was kept.

MR. BALDUS. When a cargo is sealed, and if that seal is broken before it gets there, that is reason enough to question the former inspection. That is true on a carload and shipload.

If they stopped en route and adulterated it the original seal would be broken. Then obviously the original inspection would be in doubt. That is the responsibility of the carrier, it seems to me.

Mr. POAGE. I don't know how much is carried that way. I have seen some carried that way, where the ship stops at several ports, unloads some and unloads more elsewhere.

I guess the larger part of it is carried in solid shiploads to destination.

Mr. BALDUS. It should be the master's responsibility to deliver that in the condition it was received.

Mr. POAGE. Sure. I am not able to understand why the United States should in effect guarantee this.

Mr. BALDUS. Because we are getting hurt.

Mr. THONE. This whole thing has bothered me considerably, and more and more as we go along. There is a lot of wisdom to what Mr. Poage now says.

According to the GAO report, the most common violation in the New Orleans area is bribery, with inspectors being offered money or other advantages to pass favorably on the cleanliness of the ships to be loaded.

I discussed this the other day. There has been one conviction so far down there for a violation of the Grain Standards Act. All the rest have been bribery and all these other extraneous matters.

Mr. BALDUS. What was the purpose of the bribery and who was the beneficiary of the act?

Mr. THONE. I didn't understand you.

Mr. BALDUS. What was the purpose of the bribery and who was the beneficiary of the act?

Mr. THONE. The bribery was the uncleanness of the ships. The beneficiary, I assume, would be the exporter. I am not quite that familiar, but I am sure that is the way it would be.

Another thing that troubles me, and you touched on it before, staff member Moos mentioned this the other day, with the added Federal supervision, and all elements of the industry agree it has been damn well needed, that the Federal supervision has just broken down completely.

We have gone from an export business of \$2 billion and we are skyrocketing to \$21 billion on agricultural products, and \$11 billion on grain in the last year. Therefore, the Federal supervisory personnel could not do the job anymore.

I asked about whether the Department with the additional \$5 million had the tools to do the job. His response was affirmative.

Mr. Moos also indicated the additional supervision has delayed the chain down to the gulf ports 10 or 20 percent because they are getting a little more careful, which is excellent. This may in itself reinstate this inspection credibility overseas which I think the entire GAO report cries out we need.

However, when you get to this final certificate business, and I don't know whether I understand it yet—and it is not compulsory though most of the grain is handled that way because of financing requirements and others—the Federal Government does not stand behind that certificate and cannot stand behind it, as you well know, because in

America the companies own the grain, the Government does not. Other countries do not have that problem.

Again there was a strong feeling on the part of the people who reported to us the other day, and it is included in the GAO digest, that generally these countries like to deal with America and its system of export because it is easy access, the price is right, and the price is right because we do not have a lot of this redtape.

This is not an exact science. We all concede to that. You have to have some leeway here. You cannot screw it down too tightly or the whole thing will collapse.

What the chairman said is a good point. Just because we centralize these inspectors at the gulf ports does not mean, as I see it now—and I was leaning strongly that way—will not solve the basic problem here.

Excuse me. I have talked too long.

Mr. BALDUS. Are you saying there is no problem or, if there is, there is nothing we can or should do about it?

Mr. THONE. There is a wide-scale problem obviously. I think the whole GAO report reflects that.

The first thing we can and have done about it is souped up the Federal supervisory force here on the inspectors. They just were not having any inspection at all is what I was told. They were going around them left and right.

Mr. BALDUS. Then it seems to me it is our responsibility to pursue it. The chairman has taken the most responsible way he can find correctly to pursue it.

To stop now would seem to me to be a matter of gross irresponsibility.

Mr. THONE. I am inclined to agree.

One more thought. First, increased Federal supervision was tremendously essential.

Second, most of us concede that the USDA needs some original inspection authority.

Third, I think the agency responsibility, as the chairman has pointed out, has to be pinned down in many respects.

All of these criminal penalties have to be beefed up considerably. That is why I interrogated Mr. Bor regarding that. I am satisfied as to that.

The CHAIRMAN. I think what Mr. Poage has said is important. Apparently complaints have been received from foreign buyers that when they question the validity of our inspections, there is no governmental recourse for the very reason Mr. Poage pointed out. The Government does not own the grain, and there is no other provision for settlement.

Therefore, to summarize Mr. Poage's argument, if we proceed to have original Federal inspection at the export points, it could easily put the Government in an even more direct position of responsibility over the inspection of the grain.

Then, if the inspection process is not improved dramatically by that action, Mr. Poage could say, "What have we done? We have gotten the Government closer to the inspection process and yet there remains no method of arbitration on a government-to-government basis or on a purchaser-to-government basis."

"It is the theory of those supporting Federal inspection that there would be much tighter supervision resulting in much more satisfactory inspection with fewer complaints.

That, of course, remains to be seen.

Mr. POAGE. I came into these hearings sometime ago as a strong believer we should greatly increase the power of the Government in these inspections, and we wanted to do all these things.

I suppose I am still of that opinion. I suppose I will still vote that way because I have not seen any other recourse.

However, I am seriously shaken when I learn that our Government is certifying the quality of something over which it does not have control. Its certification means nothing.

I am not prepared to say we ought to have the Government guarantee the safe arrival of this grain. That may be the only answer to it. I would not be ready this morning to go that far.

However, I do not like to have my Government say that this is 100 percent good when it may be rotten. I don't like my Government to issue certificates, even without fraud, which may not be valid certificates.

I would like my Government, when it says this is true, that it in fact be true.

Unless there is some strong and compelling reason for doing so I cannot see why we should issue these certificates unless we are getting a substantial advantage by issuing them.

I certainly agree with Mr. Baldus that any breakdown in the quality of our grain exported ultimately comes back to the producer. That is the only reason I am interested in trying to pass legislation which will prevent the exportation of low quality grain under a high quality claim.

Certainly the producer has to pay for that over the years. I think we all understand that. We must keep up our quality.

However, when they are not keeping it up, or when part of it is not being kept up, why should the Government inject itself in there and have the embarrassment of saying that the U.S. Government says this is perfect when everybody knows it is not?

That is the point I wonder about. What advantage is there to having this Government certificate?

I know the advantage to the financier. I know that nobody can pay his draft until he knows what somebody is willing to receive.

We are probably now in the position we never were before. We are perhaps in the position now of requiring the foreign buyer to pay at the American port. We are perhaps in a position where he would be willing to do that now. It might very well be a good opportunity to change some of these practices.

Of course the practice comes up that if the Australian ships on credit and Rotterdam and the United States will not, of course the Dutch and German buyer will buy from the supplier who will deliver it to him.

However, we have about reached the point where most of these suppliers cannot deliver it to them and perhaps we are in a position to change the practice of payment. It is the payment proposition which requires these certifications as to what goes on aboard the ship. I understand it is not the foreign buyer but a matter of getting payment on the draft.

The CHAIRMAN. Mr. Bedell?

Mr. BEDELL. I should say that as a former businessman who sold a product, I really get disturbed when we start to talk about what we can require the customer to do.

As a businessman who sold a product; the customer is right. You had better try to do everything you can to make that customer buy your product.

I was aghast when I found out in the GAO report there were countries who would prefer to buy grain from other countries than America because they felt quality was better.

We are maybe in a position where we can do that but we will not necessarily always have a seller's market.

I think we should do everything we can to cause every buyer to want to buy American grain.

If we are to put a certificate on it, which I think we should, then I think we should give the Federal Government inspectors whatever power they need to see that that inspection confirms what they find the quality of that grain to be.

The reason they do not have any confidence in those certificates now is because the Federal inspector is putting a stamp on something that he does not know whether or not it is really that quality. Anybody shipping any product can only ensure the quality of the product he ships.

I submit if you give an inspector complete authority to reject a product that he then does have control over the quality of the product it ships, and we are giving our people that authority.

I submit I am much less concerned about embarrassing the Government than I am concerned about being sure we have a product which we will sell on the market which will enable our producers, our farmers if you will, to get the best price and maintain this strong market.

To me I am of the strong opinion we should do whatever we have to at the port level to see we are giving those foreign buyers all the confidence we can in the product we are shipping them.

The CHAIRMAN. I would like to suggest two or three things briefly.

Obviously the Government has an interest in selling as many of its agricultural products as possible. This is a balance of payments fact; and, in addition, the Government always takes its share of the profits in grain exports.

I suppose the real question Mr. Poage raises comes down to what the attitudes of the buyers would be. Would they be more inclined to purchase with a Government-inspection certificate, even though that was not backed up by Government arbitration, or by simply contracting the responsibility to private firms where they, the purchasers, must maintain their own inspection. I finally think it comes down to that.

If it appears that purchasers of grain abroad would be more likely to purchase American products with some form of private contractual agreement, where they were able to put their own inspectors in our ports, that is something we should consider seriously.

Mr. POAGE. I agree.

Mr. BEDELL. It seems we had that in soybean meal. Soybean meal importers said they would prefer not to buy from America because they were not confident in the quality of the soybean meal they were getting.

The CHAIRMAN. That is a different question, Mr. Bedell, having to do with the protein level.

Mr. BEDELL. That is not what I say. In soybean meal there are at this time no requirements there be any certificate and it is left completely up to the shippers and buyers to negotiate.

At least in the hearing I attended in the Senate they told us they preferred to buy their soybeans from Brazil rather than from America.

Mr. THONE. The answer is that it is because of the protein content.

Mr. BEDELL. But the soybean meal people I heard said it was not because of the protein content but because of the quality of the meal and the material in the meal being not what they expected it to be.

Mr. THONE. Look at page 9. However, there is also something in what you say.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. I am mindful of Chairman Poage's comments. I think he put his finger on it, and that is essentially what we are dealing with here.

I say it even goes far beyond his concern that we slap a USDA seal on a foreign shipment saying it is of a certain grade when we don't know it is of a certain grade.

In addition, as the GAO points out, 50 percent of our country elevators don't trust the inspection system, either.

If those two elements are not enough to prompt us to get on with the business of really establishing something which is firm, I am not sure what it takes to get legislative action.

Clearly in the Canadian system, where they make a final sample automatically before the ship leaves the port, that is a tremendous advantage to the buyer at the other end. They can resample immediately.

If there is an error they catch that and it is backed up. If it is not No. 2 corn but No. 3 corn, right then and there it is done.

With a 3-percent factor of Federal inspection there is no way you can do that, especially under the conditions of the GAO outline.

The key to our operation here ought to be to seek out the kinds of things that would make that certificate meaningful.

If that means final inspection by a Federal inspector at the port of export, then that is what we ought to do.

If it means—and no one has mentioned this—you empower the Federal Government with the authority to make good a claim of a foreign buyer upon reinspection that we sold them something they didn't get, then make claim on the seller for having adulterated the grain, or having sold No. 3 rather than No. 2, there are dozens of ways or options open to us.

Our goal should be the restoration of confidence and assurance on the part of the foreign buyer that when he buys a certain grade and a certain weight from the United States, that is what he is getting.

I admit it is easier to do on cotton. However, a long time ago they said it could not be done on meat. We solved that problem.

We say now we cannot do it on grain. Canada solved that problem.

The Japanese have figured out even with our sloppy inspection system how to get around it. They automatically reinspect it.

If the Japanese—good buyers that they are—figured it out, cer-

tainly we should figure out a way of making this uniform across the board.

The restoration of confidence in assuring commercial markets is tremendously important to the farmer who sells his grain out in Indiana. It just is. It costs him thousands, if not millions, of dollars a year. That is what I am concerned about.

The CHAIRMAN. I think we can also look at it from the standpoint expressed by Mr. Poage. What would happen if we took the alternative and simply eliminated Federal involvement, either by certifying inspection agencies or limiting direct Federal inspection?

It is my feeling personally that that would destabilize the market for a time rather dramatically. Furthermore it would perhaps lower confidence until some other system came into effect. It might have a serious impact on our sales if, in fact, we were not in the seller's market we have today.

Mr. FITHIAN. When we get to the place where foreign buyers do not even any more in any substantial way complain to the USDA because the track record is that nothing happens with the complaint, and then they complain to the seller and nothing happens with that, if that indeed is the case, as the GAO says it is, then I think we simply have to make substantive changes.

The CHAIRMAN. I think that is what they reported the foreign buyers have told them.

Mr. FITHIAN. In my discussion with them this was corroborated right down the line. If they had their choice they would buy elsewhere, where it is guaranteed they get what they pay for.

Mr. POAGE. Is it guaranteed in other countries? Can you buy from Australia guaranteed?

Mr. FITHIAN. I understand the Canadian inspection system to be such that it is. I am less familiar with the Australian system.

Even the Brazilian system, and we think of that as a developing country, they will turn to the Brazilian system to purchase soybeans.

Mr. BALDUS. I think what we want to develop—and I apologize to Chairman Poage for not precisely understanding his question, perhaps, but I think in the final analysis we want to do what will enhance free flow of commerce.

Ultimately we want to develop a system so when I say No. 2 yellow corn over the telephone to you, you know exactly what I am talking about.

Mr. POAGE. That is right.

Mr. BALDUS. You can be confident it will be that way in my mind and yours. If something happens in between, that is something we both have to worry about.

It seems to me that if that is our purpose——

The CHAIRMAN. If I may say something for the record and for the press at this juncture in order to avoid confusion.

There is no GAO report. There have been discussions with the GAO which were oral in character. We have no physical document which constitutes a written GAO report at this point.

Although members have been referring to the GAO report, what they are in fact talking about are briefings and conferences with the

General Accounting Office rather than an official report of the GAO. There is also a series of staff memos on this subject.

That should be stated for the record because it might lead visitors to assume there is something stamped "GAO Report," which is a physical, written report, when, in fact, there is no such document.

The other comment I would like to make at this point is that there are many factors which have affected our grain sales such as price, quality, access to markets, and so on.

Before the inspection service came into existence in 1916, the volume of sales was very low. Things have changed substantially since then.

Before we absolutely declare that Federal Government involvement in the inspection process is bad, it could be argued that the system has to some extent justified itself in historical terms. We have become the largest exporters of grain in the world by such overwhelming amounts that other factors become involved.

The point Chairman Poage raised is interesting. I am as nervous as he is about what would happen if we simply eliminated the Federal supervisory inspection process at a time when we have a very important market.

I think everybody on the committee agrees that our efforts should sustain and expand the market rather than create circumstances which would shrink it.

The gentleman from Texas moves that the committee now adjourn.

All those in favor signify by saying aye; opposed no.

The committee will stand adjourned to meet at 10 o'clock on Thursday.

[Whereupon, at 11:55 a.m. the meeting adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

THURSDAY, NOVEMBER 13, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, de la Garza, Vigorito, Jones of Tennessee, Melcher, Bergland, Bowen, Rose, Litton, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, Jenrette, D'Amours, Wampler, Sebelius, Thone, Symms, Madigan, Jeffords, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; Steve Allen, staff consultant; Gene Moos, staff analyst; James E. Springfield, food programs specialist; L. T. Easley, press assistant; Glenda Temple, Susan Bell and David Wright, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order.

The Chair wishes to inform the committee that a quorum is present.

Without objection, the Chair considers that the committee print is before the committee and open to amendment at any point.

Is there objection?

Hearing none, the committee print is open for discussion or amendment at any point.

[The committee print follows:]

[COMMITTEE PRINT]

NOVEMBER 12, 1975

94TH CONGRESS
1ST SESSION

H. R.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER , 1975

Mr. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the United States Grain Standards Act to improve grain inspection and operations of official inspection agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “United States Grain
4 Standards Act of 1975”.

5 OFFICIAL INSPECTION

6 SEC. 2. Section 3 of said Act (82 Stat. 761, 7 U.S.C.
7 75) is amended by changing subsection (i) defining the
8 term "official inspection", subsection (j) defining the term
9 "official inspection personnel", and subsection (m) defining

1 the term “official inspection agency”, and adding a new
2 subsection (v) to read, respectively, as follows:

3 “(i) The term ‘official inspection’ means the determina-
4 tion (by original inspection, and when requested, reinspec-
5 tion and appeal inspection) and the certification, by official
6 inspection personnel, of the kind, class, quality, or condition
7 of grain, under standards provided for in this Act, or the
8 condition of vessels and other carriers or containers for trans-
9 porting or storing grain insofar as it may affect the quality
10 or condition of such grain; or, upon request of the interested
11 person applying for inspection, the quantity of sacks of grain,
12 or other facts relating to grain under other criteria approved
13 by the Secretary under this Act (the term ‘officially in-
14 spected’ shall be construed accordingly).

15 “(j) The term ‘official inspection personnel’ means per-
16 sons licensed or otherwise authorized by the Secretary pur-
17 suant to section 8 of this Act to perform all or specified
18 functions involved in official inspection, or in supervision of
19 official inspection, or in monitoring activities in foreign ports
20 with respect to grain officially inspected under this Act.”.

21 “(m) The term ‘official inspection agency’ means any
22 State with which the Secretary has a cooperative agree-
23 ment under subsection (e) or any State or local govern-
24 mental agency, or any person, designated by the Secretary

1 pursuant to an agreement under subsection (f) of section 7
2 of this Act for the conduct of official inspection.”.

3 “(v) The term ‘export port location’ means a commonly
4 recognized port of export in the United States or Canada, as
5 determined by the Secretary of Agriculture, from which grain
6 produced in the United States is shipped to an area outside
7 the United States.”.

8 SEC. 3. Section 7 of said Act (82 Stat. 763, 7 U.S.C.
9 79) is amended by changing subsections (e) and (f) and
10 adding new subsections (g), (h), and (i) to read, re-
11 spectively, as follows:

12 “(e) The Secretary shall cause official inspection to be
13 performed at export port locations, for all grain required or
14 authorized to be inspected by this Act, by authorized em-
15 ployees of the Department of Agriculture or other persons
16 under contract with the Department as provided in section 8,
17 except that the Secretary is authorized to enter into a co-
18 operative agreement with any State for the conduct of all
19 or specified functions involved in official inspection (other
20 than appeal inspections) at such locations within the State
21 if the State establishes to the satisfaction of the Secretary
22 that it meets the criteria of subsection (f) (1) (A) of this
23 section. The Secretary may provide that grain loaded at an
24 interior point in the United States into a rail car, barge, or

1 other container as the final carrier in which it is to be
2 transported from the United States shall be inspected in
3 the manner provided in this subsection or subsection (f), as
4 the Secretary determines will best meet the objectives of
5 this Act.

6 “(f) (1) With respect to official inspections other than
7 at export port locations the Secretary is authorized, upon
8 application and payment of the fee required by this section
9 by any State or local governmental agency, or any person,
10 to designate such agency or person as an official inspection
11 agency for the conduct of all or specified functions involved
12 in official inspection (other than appeal inspection) at lo-
13 cations at which the Secretary determines official inspection
14 is needed, if:

15 “(A) the agency or person shows to the satisfaction
16 of the Secretary that such agency or person:

17 “(i) has adequate facilities and qualified person-
18 nel for the performance of such official inspection
19 functions;

20 “(ii) will conduct such training and provide
21 such supervision of its personnel as are necessary
22 to assure that they will provide official inspection in
23 accordance with this Act and the regulations and
24 instructions thereunder;

1 “(iii) will not charge official inspection fees that
2 are discriminatory or unreasonable;

3 “(iv) does not have a conflict of interest pro-
4 hibited by section 11 of this Act;

5 “(v) will maintain complete and accurate
6 records of its organization, staffing, official inspec-
7 tions, and fiscal operations, and such other records
8 as the Secretary may require by regulation;

9 “(vi) will comply with all provisions of this
10 Act and the regulations and instructions thereunder;

11 “(vii) meets other criteria established in regu-
12 lations issued under this Act relating to official in-
13 spection agencies or the performance of official
14 inspection; and

15 “(B) the Secretary determines that the applicant
16 is better able than any other applicant to provide official
17 inspection service.

18 “(2) Not more than one official inspection agency for
19 carrying out the provisions of this Act shall be operative at
20 one time for any geographic area as determined by the
21 Secretary to effectuate the objectives stated in section 2 of
22 this Act, but this subsection shall not be applicable to pre-
23 vent any inspection agency from operating in any area in
24 which it was operative on August 15, 1968. No State or

1 local governmental agency or person shall provide any of-
2 ficial inspection for purposes of this Act except pursuant to
3 an unsuspended and unrevoked designation by the Secretary,
4 as provided in this section, or as provided in section 8 (a).

5 “(g) (1) Agreements with official inspection agencies
6 shall terminate at such time as specified by the Secretary
7 but not later than triennially and may be renewed in accord-
8 ance with the criteria and procedure prescribed in subsections
9 (e) and (f).

10 “(2) Each official inspection agency shall pay to the
11 Secretary fees established by the Secretary at such levels as
12 are necessary to cover one-half the Federal administrative
13 and supervisory costs directly related to the official inspection
14 of grain by such agencies and the designation and supervision
15 of such agencies, except costs incurred under paragraph (4)
16 of this subsection and sections 9, 10, and 14 of this Act. The
17 fee shall be calculated at an annual rate prescribed by regula-
18 tion of the Secretary based on the volume of grain officially
19 inspected by the agency in the preceding year, and at a rate
20 prescribed by regulation of the Secretary based on the num-
21 ber of certificates issued for submitted samples officially in-
22 spected by such agency in that year, and if no such inspec-
23 tions were made or certificates were issued in that year by
24 such agency, then such fee shall be based on the anticipated
25 volume of grain to be officially inspected and number of

1 certificates to be issued for submitted samples for the current
2 year. The fees shall be payable in quarterly installments
3 beginning at the time of designation and shall be deposited
4 in the fund provided for in subsection (i) of this section.
5 Failure to pay the fee within thirty days after it is due shall
6 result in automatic termination of the agreement with the
7 official inspection agency. Such agreement shall be reinstated
8 upon payment, within ten days after such termination, of the
9 fee currently due and any further expenses incurred by the
10 Department because of such termination.

11 “(3) An agreement with an official inspection agency
12 may be amended at any time upon application by the official
13 inspection agency if the Secretary determines that the
14 amendment will be consistent with the provisions and ob-
15 jectives of this Act; and an agreement will be canceled upon
16 request by the official inspection agency with ninety days
17 written notice to the Secretary. A fee as prescribed by reg-
18 ulations of the Secretary shall be paid by the official inspec-
19 tion agency to the Secretary for each such amendment, to
20 cover the costs incurred by the Department in connection
21 therewith, and it shall be deposited in the fund provided for
22 in subsection (i) of this section.

23 “(4) The Secretary may revoke an agreement with an
24 official inspection agency whenever, after opportunity for
25 hearing is afforded to the agency, the Secretary determines

1 that the agency has failed to meet one or more of the criteria
2 specified in subsection (f) of this section or the regulations
3 under this Act for the performance of official inspection
4 functions, or otherwise has not complied with any provision
5 of this Act or any regulation prescribed or instruction issued
6 to such agency under this Act, or has been convicted of any
7 violation of other Federal law involving the handling or of-
8 ficial inspection of grain: *Provided*, That the Secretary may,
9 without first affording the official inspection agency an op-
10 portunity for a hearing, suspend any agreement pending
11 final determination of the proceeding whenever the Secre-
12 tary has reason to believe there is cause for revocation of the
13 agreement and considers such action to be in the best interest
14 of the official inspection system under this Act. The Secretary
15 shall afford any such agency an opportunity for a hearing
16 within thirty days after temporarily suspending such designa-
17 tion.

18 “(h) If the Secretary determines that official inspection
19 by an official inspection agency designated under subsection
20 (f) is not available on a regular basis at any location
21 (other than at an export port location) where the Secre-
22 tary determines such inspection is needed to effectuate the
23 objectives stated in section 2 of this Act, and that no official
24 inspection agency within reasonable proximity to such loca-
25 tion is willing to provide and has or can acquire adequate

1 personnel and facilities for providing such service on an
2 interim basis, official inspection shall be provided by au-
3 thorized employees of the Department, and other persons
4 licensed by the Secretary to perform official inspection func-
5 tions, as provided in section 8 of this Act, until such time as
6 the service can be provided on a regular basis by an official
7 inspection agency.

8 “(i) The Secretary shall, under such regulations as he
9 may prescribe, charge and collect reasonable inspection fees
10 to cover the estimated cost to the Department of Agriculture
11 incident to the performance of official inspection, except
12 when the inspection is performed by an official inspection
13 agency. The fees authorized by this subsection shall, as
14 nearly as practicable and after taking into consideration any
15 proceeds from the sale of samples, cover the costs of the
16 Department of Agriculture incident to its performance of
17 official inspection services in the United States and on United
18 States grain in Canadian ports, including supervisory and
19 administrative costs related to such official inspection of
20 grain. Such fees, and the proceeds from the sale of samples
21 obtained for purposes of official inspection which become the
22 property of the United States, shall be deposited into a fund
23 which shall be available without fiscal year limitation for the
24 expenses of the Department of Agriculture incident to pro-

1 viding official inspection services, including supervisory and
2 administrative costs as provided in this section.”.

3 SEC. 4. Section 11 of said Act (82 Stat. 766, 7 U.S.C.
4 87) is amended by designating the provisions thereof as
5 subsection (a) and adding a new subsection (b) to read as
6 follows:

7 “(b) No official inspection agency or any member,
8 officer, employee, or stockholder thereof shall have such a
9 conflict of interest, either directly or indirectly, in any busi-
10 ness involving the transportation, storage, merchandising, or
11 other handling of grain or use of official inspection service
12 as to jeopardize the integrity or the effective and objective
13 operation of the inspection service performed by such agency.

14 OFFICIAL INSPECTION PERSONNEL

15 SEC. 5. Subsection (a) of section 8 of said Act (82 Stat.
16 764, 7 U.S.C. 84) is amended to read as follows:

17 “(a) The Secretary is authorized (1) to issue a license
18 to any individual upon presentation to him of satisfactory
19 evidence that such individual is competent, and is employed
20 by an official inspection agency, to perform all or specified
21 original inspection or reinspection functions involved in
22 official inspection of grain in the United States; (2) to
23 authorize any competent employee of the Department of
24 Agriculture to (i) perform all or specified original inspec-
25 tion, reinspection, or appeal inspection functions involved

1 in official inspection of grain in the United States, or of
2 United States grain in Canadian ports, (ii) supervise the
3 official inspection of grain in the United States and of United
4 States grain in Canadian ports, and (iii) perform monitor-
5 ing-activities in foreign ports with respect to grain officially
6 inspected under this Act; (3) to contract with any person
7 to perform specified sampling and laboratory testing and to
8 license competent persons to perform such functions pur-
9 suant to such contract; and (4) to contract with any com-
10 petent person for the performance of monitoring-activities
11 in foreign ports with respect to grain officially inspected
12 under this Act. No person shall perform any official inspec-
13 tion functions for purposes of this Act unless such person
14 holds an unsuspended and unrevoked license or authorization
15 from the Secretary under this Act.”.

16 SEC. 6. Section 8 of said Act is amended by adding a
17 new subsection (e) as follows:

18 “(e) The Secretary of Agriculture may hire (without
19 regard to the provisions of title 5, United States Code, gov-
20 erning appointments in the competitive service) as official
21 inspection personnel any individual who is licensed (on the
22 date of enactment of this Act) to perform functions of official
23 inspection under the United States Grain Standards Act:
24 *Provided*, That the Secretary of Agriculture determines that
25 such individuals are of good moral character and are tech-

1 nically and professionally qualified for the duties to which
2 they will be assigned.”.

3 SEC. 7. Section 9 of said Act (82 Stat. 765, 7 U.S.C.
4 85) is amended by adding a new sentence at the end
5 thereof to read as follows: “The Secretary may summarily
6 revoke any license whenever the licensee has been convicted
7 of any offense prohibited by section 13 of this Act, or con-
8 victed of any offense proscribed by title 18, United States
9 Code, with respect to performance of official duties under
10 this Act.”.

11 **【Option No. 1】**

12 **WEIGHING**

13 SEC. 8. The Secretary of Agriculture shall conduct a
14 study concerning the procedures for the weighing, and for
15 the certification of the weight, of grain delivered from ele-
16 vators or other facilities for shipment in interstate or foreign
17 commerce, the supervision of weighing and certification of
18 weights, and the testing of weights and scales used in the
19 weighing of such grain. The Secretary shall report the results
20 of the study to the House Committee on Agriculture and the
21 Senate Committee on Agriculture and Forestry not later
22 than six months after the effective date of this Act, together
23 with any recommendation he deems necessary for strengthen-
24 ing the adequacy and reliability of the system.

1 **【Option No. 2】**

2 WEIGHING

3 SEC. 8. A new section is added to the United
4 States Grain Standards Act to read as follows:

5 “WEIGHTS

6 “SEC. . (a) Notwithstanding any other provision of
7 law, the Secretary of Agriculture is authorized to pre-
8 scribe, by regulations, the procedures for the weighing and
9 the certification of the weight of grain delivered in interstate
10 or foreign commerce, and to supervise generally the weighing
11 and the certification of the weight of such grain. No person
12 shall weigh, or state in any document the weight of, such
13 grain in any State, territory, or possession of the United
14 States except in accordance with any such procedures pre-
15 scribed by the Secretary unless such jurisdiction is enforce-
16 ing equivalent procedures under its laws pursuant to a
17 cooperative agreement under subsection (c) of this section.

18 “(b) Notwithstanding any other provision of law, the
19 Secretary is further authorized to inspect and test, in accord-
20 ance with the procedures prescribed in regulations issued by
21 the Secretary, all weights and scales used in the weighing of
22 grain delivered in interstate or foreign commerce. No per-
23 son shall use in weighing such grain any weights or scales
24 disapproved by the Secretary.

1 “(c) The Secretary shall promulgate regulations which
2 shall require that all scales used for weighing grain delivered
3 in interstate or foreign commerce shall automatically stamp
4 on a receipt or a ticket, by means of a mechanical device,
5 the true and correct weight of any grain weighed. The re-
6 ceipt or ticket shall be made immediately available to the
7 buyer and seller of the grain.”.

8 “(d) Such supervision or such inspection and testing
9 shall be performed by employees of the Department of Agri-
10 culture unless (1) the Secretary finds that the State, ter-
11 ritory, or possession in which the weighing is done, conducts,
12 respectively, supervision of the weighing and the certifica-
13 tion of the weight of grain or the inspection and testing of
14 weights and scales used in weighing grain, under procedures
15 equivalent to those prescribed under this section and (2)
16 the State, territory, or possession enters into a cooperative
17 agreement with the Secretary for the conduct of such activ-
18 ities, under the laws of such State, territory, or possession
19 with respect to elevators and warehouses subject to its juris-
20 diction.

21 “(e) The provisions of this section shall not limit any
22 authority vested in the Secretary under the United States
23 Warehouse Act (39 Stat. 486, as amended; 7 U.S.C. 241-
24 273).

25 “(f) The representatives of the Secretary shall be af-

1 forded access to any elevator or warehouse from which grain
2 is delivered for transportation in interstate or foreign com-
3 merce and all facilities therein for weighing grain.

4 “(g) If the Secretary determines, after affording an
5 opportunity for a hearing, that any person has violated the
6 provisions of this section, or any regulations promulgated
7 thereunder the Secretary may refuse to provide such person
8 official inspection under the United States Grain Standards
9 Act for such period as he deems necessary to effectuate the
10 purposes of this section.”.

11 REGISTRATION REQUIREMENTS

12 SEC. 9. The United States Grain Standards Act is
13 amended by redesignating sections 18 and 19 as sections 20
14 and 21, respectively, and by inserting after section 17 the
15 following new section:

16 “REGISTRATION REQUIREMENTS

17 “SEC. 18. (a) The Secretary shall provide, under such
18 regulations as he may prescribe, for the registration of all
19 persons engaged in the business of buying grain for sale in
20 interstate or foreign commerce, and in the business of
21 handling, weighing, or transporting of grain for sale in
22 interstate or foreign commerce. This section shall not apply
23 to—

24 “(1) any person who only incidentally or occasion-
25 ally buys for sale, or handles, weighs, or transports grain

1 for sale and is not engaged in the regular business of
2 buying grain for sale, or handling, weighing, or trans-
3 porting grain for sale;

4 “(2) any producer of grain who only incidentally
5 or occasionally sells or transports grain which he has
6 purchased;

7 “(3) any person who transports grain for hire and
8 does not own a financial interest in such grain;

9 “(4) any person who buys grain for feeding or
10 processing and not for the purpose of reselling and only
11 incidentally or occasionally sells such grain as grain; or

12 “(5) any merchandiser of grain who sells less than
13 two million five hundred thousand bushels of grain in a
14 calendar year, or owns, operates, or otherwise controls
15 grain elevators with total storage capacity of less than
16 one million bushels.

17 “(b) (1) All persons required to be registered under
18 this Act must submit the following information to the
19 Secretary:

20 “(A) the name and principal address of the
21 business,

22 “(B) the names of all directors of such business,

23 “(C) the names of the principal officers of such
24 business,

1 “(D) the names of all persons in a control relation-
2 ship with respect to such business,

3 “(E) a list of locations where the business conducts
4 substantial operations, and

5 “(F) such other information as the Secretary deems
6 necessary to carry out the purposes of this Act.

7 “(2) For purposes of subparagraph (D) of paragraph
8 (1), a person shall be deemed to be in a ‘control relation-
9 ship’ with respect to a business required to register under
10 subsection (a) if—

11 “(A) such person has an ownership interest of 10
12 per centum or more in such business, or

13 “(B) a business or group of business entities, with
14 respect to which such person is in a control relationship.
15 has an ownership interest of 10 per centum or more in
16 such business.

17 “(3) For purposes of subparagraphs (A) and (B) of
18 paragraph (3) above, a person shall be considered to own
19 the ownership interest which is owned by his or her spouse,
20 minor children, and relatives living in the same household.

21 “(4) No information shall be required pursuant to sub-
22 paragraph (F) of paragraph (1) of subsection (b) unless
23 the Secretary has submitted such requirement to the Con-
24 gress, and the Congress, within thirty days, fails to provide

1 by concurrent resolution that such information shall not be
2 required.

3 “(c) The Secretary shall issue a certificate of registra-
4 tion to persons who comply with the provisions of this sec-
5 tion. The certificate of registration issued in accordance
6 with this section shall be renewed annually. If there has
7 been any change in the information required under subsec-
8 tion (b), the person holding such certificate shall, within
9 thirty days of the discovery of such change, notify the Sec-
10 retary of such change. No person shall engage in the business
11 of buying grain for sale in interstate or foreign commerce,
12 and in the business of handling, weighing, or transporting of
13 grain in interstate or foreign commerce unless he has regis-
14 tered with the Secretary as required by this Act and has an
15 unsuspended or unrevoked certificate of registration.

16 “(d) The Secretary may suspend or revoke any
17 certificate of registration issued under this section whenever,
18 after the person holding such certificate has been afforded
19 an opportunity for a hearing, the Secretary shall determine
20 that such person has violated any provision of this Act or of
21 the regulations promulgated thereunder, or has been con-
22 victed of any violation involving the handling or inspection of
23 grain under title 18 of the United States Code. The Secre-
24 tary may, without first affording such person an opportunity
25 for a hearing, suspend any certificate of registration tem-

1 porarily pending final determination whenever the Secretary
2 deems such action to be in accordance with the purposes of
3 this Act, except that the Secretary shall afford any such
4 person an opportunity for hearing within thirty days after
5 temporarily suspending such certificate of registration.

6 “(c) The Secretary shall charge and collect fees from
7 any person registered pursuant to subsection (a). The
8 amount of such fees shall be determined on the basis of the
9 costs of the Secretary in administering the registration di-
10 rected by subsection (a). Such fees shall be deposited in, and
11 used as part of, the funds described in the third sentence of
12 section 7 (i).”.

13 REFUSAL OF INSPECTION AND CIVIL PENALTIES

14 SEC. 10. (a) Subsection (a) of section 10 of said Act
15 (82 Stat. 765, 7 U.S.C. 86) is amended by deleting the
16 term “has been convicted of any violation of section 13 of
17 this Act”, and substituting the following: “has committed
18 any violation of section 13 of this Act or has been convicted
19 of any violation of other Federal law involving the handling
20 or official inspection of grain”; and by adding the following
21 at the end of said subsection: “In addition to, or in lieu of,
22 penalties provided under section 14 of this Act, the Secretary
23 may refuse to provide official inspection in accordance with
24 this section or assess against the respondent a civil penalty
25 not to exceed \$50,000 for each such violation, or both, as

1 the Secretary determines is appropriate to effectuate the
2 objectives stated in section 2 of this Act.”.

3 (b) Subsection (c) of section 10 of said Act is amended
4 to read as follows:

5 “(c) Before official inspection is refused to any person
6 or a civil penalty is assessed against any person under sub-
7 section (a), such person shall be afforded opportunity for a
8 hearing in accordance with sections 554, 556, and 557 of
9 title 5, United States Code.”.

10 (c) A new subsection (d) is added to section 10 of said
11 Act to read as follows:

12 “(d) Moneys received in payment of such civil penalties
13 shall be deposited in the general fund of the United States
14 Treasury. Upon any failure to pay the penalties assessed
15 under this section, the Secretary may request the Attorney
16 General to institute a civil action to collect the penalties in
17 the appropriate court identified in subsection (h) of section
18 17 of this Act for the jurisdiction in which the respondent is
19 found or resides or transacts business, and such court shall
20 have jurisdiction to hear and decide any such action.”.

21 RECORDS

22 SEC. 11. (a) Section 12 of said Act (82 Stat. 766, 7
23 U.S.C. 87a) is amended by inserting after the term “official
24 inspection agency” each time it appears in subsections (b)

1 and (c), the term "and every person licensed to perform
2 any official inspection function under this Act".

3 (b) Section 12 of said Act is further amended by add-
4 ing the following new subsection (d), at the end thereof:

5 "(d) Every person who, at any time, has obtained or
6 obtains official inspection shall, within the five-year period
7 thereafter, maintain complete and accurate records of pur-
8 chases, sales, transportation, storage, treating, cleaning, dry-
9 ing, blending, and other processing, and official inspections
10 of grain, and permit any authorized representative of the
11 Secretary, at all reasonable times to have access to, and to
12 copy, such records and to have access to any grain elevator
13 or other facility used by such person for handling of grain."

14 STUDY OF CONTAMINATION, TRANSPORTATION, AND
15 HANDLING

16 SEC. 12. The Secretary of Agriculture is hereby
17 authorized and directed to conduct a study concerning the
18 contamination, transportation, and handling of United States
19 agricultural products. On the basis of the results of such
20 study, the Secretary shall, not later than one year after the
21 enactment of this section, submit a report to the Congress
22 and make such legislative recommendations as he deems
23 necessary to maintain or increase the quality of United States
24 agricultural products.

STUDY OF GRAIN STANDARDS

SEC. 13. In order to assure that producers, handlers, and transporters of grain are encouraged and rewarded for the production, maintenance, and delivery of high quality grain, the Secretary of Agriculture is hereby authorized and directed to conduct a study regarding the adequacy of the current grain standards, established under the United States Grain Standards Act, including the grading factor "foreign material" for corn and soybeans. On the basis of the results of such study, the Secretary shall, in accordance with section 4 of the United States Grain Standards Act, make such changes in the grain standards as he determines necessary and appropriate, and, not later than six months after the enactment of this joint resolution, submit a report to the Congress setting forth the findings of such study.

REPORTS OF COMPLAINTS

SEC. 14. The United States Grain Standards Act is amended by inserting after section 18 the following new section:

"REPORTING REQUIREMENTS

"SEC. 19. (a) The Secretary shall notify the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry (1) of any complaint made by a foreign purchaser to the Department of Agriculture regarding faulty grain delivery within thirty days after a determi-

1 nation by the Secretary that there is reasonable cause to be-
2 lieve that the grain delivery was in fact faulty and (2) with-
3 in thirty days after receipt by him of notification of the
4 cancellation of any contract for the export of more than one
5 hundred thousand metric tons of grain.

6 “(b) On February 1 of each year, the Secretary shall
7 submit to the House Committee on Agriculture and the Sen-
8 ate Committee on Agriculture and Forestry a summary of all
9 other complaints received by the Department of Agriculture
10 from foreign purchasers and prospective purchasers of grain
11 and other foreign purchasers interested in the trade of grain:
12 *Provided*, That the summary shall not include a complaint
13 unless reasonable cause exists to believe that the complaint
14 is valid, as determined by the Secretary.”.

15 CRIMINAL PROVISIONS

16 SEC. 15. Section 1114 of title 18 of the United States
17 Code, as amended, is hereby amended by (1) striking the
18 phrase “any employee of the Bureau of Animal Industry of
19 the Department of Agriculture,” and (2) inserting immedi-
20 ately after the phrase “or of the Department of Labor” the
21 words “or of the Department of Agriculture”.

22 (This provision of the Criminal Code would then
23 apply to “any officer or employee of the Department of
24 Health, Education, and Welfare or the Department of
25 Labor or of the Department of Agriculture assigned to per-

1 form investigative, inspection, or law enforcement func-
2 tions . . .”.)

3 SEC. 16. Section 14 of the United States Grain Stand-
4 ards Act (82 Stat. 767, 7 U.S.C. 87c) is amended to read as
5 follows:

6 “SEC. 14. (a) Any person who commits an offense
7 prohibited by section 13 (except an offense prohibited by
8 paragraphs (a) (7), (a) (8), and (b) (4) in which
9 case he shall be subject to the general penal statutes
10 relating to crimes and offenses against the United States)
11 shall be guilty of a misdemeanor and shall, on conviction
12 thereof, be subject to imprisonment for not more than six
13 months, or a fine of not more than \$3,000, or both such
14 imprisonment and fine; but, for each subsequent offense
15 subject to this subsection, such person shall be subject to
16 imprisonment for not more than one year, or a fine of not
17 more than \$5,000 or both such imprisonment and fine.”.

18 “(b) Nothing in this Act shall be construed as requiring
19 the Secretary to report minor violations of this Act for
20 criminal prosecution when he believes that the public interest
21 will be adequately served by a suitable written notice of
22 warning, or to report any violation of this Act for prosecu-
23 tion when he believes that institution of a proceeding under
24 section 10 of this Act will obtain compliance with this Act
25 and he institutes such a proceeding.”.

1 SEC. 17. Section 8 (d) of said Act is amended by striking
2 the period at the end thereof and substituting therefore the
3 following: “: *Provided, however,* That such persons shall be
4 considered in the performance of any official inspection
5 functions as prescribed by this Act or by the rules and
6 regulations of the Secretary, as ‘persons acting for or on
7 behalf of the United States’, for the purpose of determining
8 the application of section 201 of title 18, United States Code,
9 to such persons and as employees of the Department of
10 Agriculture assigned to perform inspection functions for the
11 purposes of section 1114 of title 18 of the United States
12 Code.”.

13 SEC. 18. Section 13 of said Act is amended by striking
14 the word “or” at the end of subsection (a) (10), striking
15 the period at the end of subsection (a) and inserting in lieu
16 thereof “; or” and adding a new subsection (a) (12) as
17 follows:

18 “(12) knowingly engage in the falsifying of the
19 weight of any grain shipped in interstate or foreign
20 commerce.”.

21 (If this provision is adopted together with Option 1 on
22 weighing, calling for a study, there is for consideration add-
23 ing the following new subsection (d) to section 12 of the
24 Act:)

25 “(d) Representatives of the Secretary shall be afforded

1 access to facilities for the weighing of grain shipped in inter-
2 state or foreign commerce.”.

3 GENERAL

4 SEC. 19. Section 16 of said Act (82 Stat. 768, 7 U.S.C.
5 87e) is amended to read as follows: “The Secretary is
6 authorized to conduct such investigations; hold such hear-
7 ings; require such reports from any official inspection agency,
8 licensee, or other person; require by regulation as a condition
9 for official inspection, among other things, the installation of
10 specified sampling and monitoring equipment in grain eleva-
11 tors, and approval of the condition of carriers and containers
12 for transporting or storing grain; and prescribe such other
13 rules, regulations, and instructions as he deems necessary to
14 effectuate the purposes or provisions of this Act. Whether
15 any certificate, other form, representation, designation, or
16 other description is false, incorrect, or misleading within the
17 meaning of this Act shall be determined by tests made in
18 accordance with such procedures as the Secretary may adopt
19 to effectuate the objectives of this Act, if the relevant facts
20 are determinable by such tests. Proceedings under section 9
21 of this Act for refusal to renew, or for suspension or revoca-
22 tion of, a license, shall not, unless requested by the respond-
23 ent, be subject to the administrative procedure provisions
24 in sections 554, 556, and 557 of title 5, United States Code.”.

25 SEC. 20. Section 17 of said Act (82 Stat. 768, 7 U.S.C.

1 87f), is amended by deleting from subsection (e) the term
2 “section 14” and substituting in lieu thereof the term “sub-
3 section (a) of section 14”; and by changing subsection (g)
4 to read as follows:

5 “(g) Any present or former officer or employee of the
6 Department of Agriculture or of any official inspection
7 agency, or any present or former licensee, who shall make
8 public any information obtained under this Act except pur-
9 suant to authority from the Secretary or a court order
10 or otherwise in connection with law enforcement proceed-
11 ings by the Federal Government, or pursuant to a request
12 from a committee of the Congress, shall be guilty of a mis-
13 demeanor, and upon conviction thereof be subject to the
14 penalties set forth in subsection (a) of section 14 of this
15 Act.”.

16 SEC. 21. Section 19 of said Act (82 Stat. 769, 7 U.S.C.
17 87h) is amended to read as follows:

18 “SEC. 19. There are hereby authorized to be appro-
19 priated such sums as are necessary for monitoring in foreign
20 ports grain officially inspected under this Act; improvement
21 of official standards for grain, improvement of inspection
22 procedures and equipment, and other activities authorized by
23 section 4 of this Act; development and issuance of rules,
24 regulations, and instructions; and other Federal administra-
25 tive and supervisory costs not covered by fees assessed under

1 section 7 of this Act. There are further authorized to be
2 appropriated such additional sums as are necessary to provide
3 initial capital for the fund, provided for in subsection (i)
4 of section 7 of this Act, for Federal administrative and super-
5 visory costs related to the official inspection of grain except
6 by official inspection agencies, and for other administrative
7 and supervisory costs directly related to official inspection
8 agencies as provided in subsection (g) (2) of section 7 of
9 this Act, pending the accumulation of sufficient amounts of
10 fees provided for in this Act to cover such costs on a current
11 basis.”.

12 EFFECTIVE DATE

13 SEC. 22. This Act shall become effective on the thirtieth
14 day after enactment hereof; and thereafter no agency or
15 person shall provide official inspection service in any area
16 without a cooperative agreement or a designation under the
17 United States Grain Standards Act, as amended hereby,
18 except that any agency or person then providing official
19 inspection service in any area, who, within the ninety-day
20 period after enactment hereof, pays an initial quarterly fee,
21 and thereafter pays quarterly fees when due, in the same
22 manner as prescribed in section 7 of the United States Grain
23 Standards Act, as amended hereby, may continue to operate
24 in that area without a cooperative agreement or a designation
25 as an official inspection agency but shall be subject to all

1 provisions of the United States Grain Standards Act and
2 regulations thereunder in effect immediately prior to the
3 effective date hereof, until whichever of the following events
4 occurs first:

5 (1) a cooperative agreement with the State cover-
6 ing the agency or designation of such agency or person
7 as an official inspection agency is granted or denied
8 by the Secretary pursuant to said Act, as amended
9 hereby; or

10 (2) such agency, or two or more members or em-
11 ployees thereof, have been or are convicted of a viola-
12 tion of any provision of the United States Grain Stand-
13 ards Act in effect immediately prior to the effective
14 date hereof; or convicted of any offense proscribed by
15 any other Federal law involving the handling or official
16 inspection of grain; or

17 (3) the expiration of a period as determined by the
18 Secretary of not more than two years following the
19 effective date hereof.

Mr. BERGLAND. Mr. Chairman, I have some questions on the first section of the bill. Is this the proper time for me to offer an amendment?

The CHAIRMAN. The gentleman is recognized.

Mr. BERGLAND. On page 3, line 4, the print recognizes the export problems vis-a-vis the United States and Canada, but omits Mexico. Is there a reason for that omission? Later on, a reference is made to grain transported to or through Mexico, but not in this particular section.

Mr. BOR. There is a peculiar reason for the reference to Canada.

There is a certain amount of grain that is shipped from the Great Lakes ports to ports in Canada and discharged from lake vessels there, stored for a short period of time and then reloaded aboard a vessel which then went overseas.

When this happens, the grain which is stored there is in bond, and when it is loaded aboard a vessel, another inspection takes place.

In the past, these inspections have been conducted by Agriculture inspectors rather than private inspection firms.

In the case of Mexico, I am not aware of any grain that is handled in the same fashion. Grain that is shipped from the United States to Mexico is shipped there for use in Mexico and not for transshipment overseas in the fashion that occurs in the case of Canada.

So this language, in making reference to Canada, is really talking about U.S. produced grain which is exported from Canada and which is inspected at the time it is loaded aboard a vessel from a Canadian port.

Mr. BERGLAND. On line 16 of page 3, reference is made to section 8 of the act as it relates to the contracting authority of the Secretary and farming out the inspection powers. What does section 8 deal with?

Mr. BOR. Section 8 is a section which provides for appointment by the Department of Agriculture for the hiring of employees to conduct inspection functions for the Department of Agriculture. It also provides that some of those inspection functions can be carried out by contract with private individuals or firms.

In the past, the Agriculture Department has contracted with firms or individuals to conduct some of the work needed in connection with appeal inspections, such as the sampling of grain.

They did not contract out, to my knowledge, the actual inspection function, that is, the determination of grade, but rather, the job of taking probes and conducting sampling.

Mr. BERGLAND. Mr. Chairman, on reflection I am not sure that I like the idea of authorizing the Secretary to contract the inspection of grain at export points with a State agency.

My concern is only one. I am not convinced that the Department will be properly conscious of, and aware of, malfeasance at State level until it may be too late.

I think it would be more appropriate to have the Department conduct the Federal inspection directly at the export level.

I know this committee print provides for authority to suspend or revoke a license if the Secretary finds that it is in the public interest.

But I am uneasy about it, because I think the triggering language in the committee print is vague and I do not know how we can be more specific than the print provides.

I want to be absolutely sure that the sanctity and integrity of the inspection system at the export points is preserved. I do not want any State agency or anyone else to be allowed to play games for any period of time. I think it should be under the direct supervision of the Secretary.

If it would please the Chair, I could offer an amendment to that effect so we could address the question, or if you would rather, we could discuss it informally and see about the consensus here.

Mr. KREBS. Will the gentleman yield?

Mr. BERGLAND. Yes.

Mr. KREBS. Mr. Chairman, I want to associate myself with the remarks just made.

We have had informal as well as formal presentation regarding the impact that some of the incidents that have occurred have had on our export market. It would seem to me that this is too important a subject for the Federal Government to delegate to anybody, including the States.

So I support an amendment along the lines offered by the gentleman from Minnesota.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

I recognize Mr. Thone.

Mr. THONE. Mr. Bergland, I am interested and concerned in this area also.

Do I understand that the current language allows the Secretary to designate the State inspection as he sees fit?

Mr. BERGLAND. That is my understanding.

Mr. THONE. Do I also understand that in the Northwest this is the procedure that might be very advisable, and that in gulf port areas this might be a procedure that might not.

Mr. BERGLAND. That is possible. I am aware of inspection at the export points in Oregon and Minnesota and elsewhere. To the best of my knowledge there has been no problem of any sort. There have been problems in certain other regions.

Mr. THONE. Will your amendment do more overall harm than good?

The CHAIRMAN. That is a leading question.

Mr. THONE. Yes, to be sure, let me restate it.

Frankly, I do not feel strongly about this one way or the other, but I do not want to cause problems in areas where there are currently not problems. Might your amendment do that?

Mr. BERGLAND. It may.

I have discussed the matter with the State agencies at Duluth, Minn., which is an export point. There has never been a problem, as far as I know. I have talked with shippers who use that port. They have no complaints. The State is doing a good job.

I am sure that other States are doing as good a job in other ports. I have no reason to doubt their integrity.

But I am concerned about whether or not, the Secretary will move in if a State is lax.

On page 8, line 8 through 17, it provides that the Secretary may, without affording the agency an opportunity for a hearing:

Suspend any agreement pending final determination of the proceeding whenever the Secretary has reason to believe there is cause for revocation of the agreement and considers such action to be in the best interest of the official inspection system under this act.

That seems to me to give the Secretary the authority to move into a State agency if he has reason to believe there is some hanky-panky going on. But I want to insure that he does not stall for 1 year or 2 or 3. He has had plenty of authority to move in on the wrongdoing at the export points which have finally surfaced. He has had that for many years. For many years he did not move in on them. I do not know what the reason was but it has become a national scandal.

If there could be more precise language that would trigger that suspension, I would be more comfortable.

Mr. THONE. My concern is that we fully develop the potential in the export area on the west coast, and also the Great Lakes. You remember when Secretary Butz was here he felt there was great possibility for expansion. I hope that this would not in any way deter that.

Mr. Chairman, basically we are talking about the Northwest, which is your area. Do you have any feelings one way or the other about this?

The CHAIRMAN. As I read the committee print, what it foresees is that the Secretary could enter into cooperative agreements with State inspection agencies who would, in turn, provide what amounts to Federal inspection. As I understand it, there is no implication that the States would have authority to provide such service under rules, regulations, and standards of their own choosing at export points.

The committee print anticipates that State inspection will, in effect, be carried out by authorized employees of the Department or by the States themselves serving as agents of the Department of Agriculture.

It seems to me that the provisions of section 8 insist that the Secretary supervise and maintain control of the inspection process.

I am a little concerned lest we deprive the Secretary of needed flexibility in carrying out Federal inspection and in making changes in the program. Moreover, we must strive to avoid disrupting the inspection process.

My inclination is that the Secretary should be given this authority, subject, of course, to oversight by this committee.

Mr. BALDUS. I have a question for counsel after I comment.

That reads,

The Secretary shall cause initial inspection to be performed at export port locations, for all grain required or authorized to be inspected by this Act, by authorized employees of the Department of Agriculture or other persons under contract with the Department as provided in section 8.

There could be private contractors also under that wording, is that correct?

Mr. BOR. That is correct, but that is just for a particular job. It does not have in mind that there would be a contract with a private agency at a port location.

The purpose of this section you refer to is to say that the Secretary will provide for Federal inspection at port locations or approve cooperative agreements with the States and authorize the States to perform the inspections. Insofar as Federal inspection is concerned for a particular job or function that needs to be performed, he could contract

with an individual or a firm, or a State, to perform that function. But, when he does that, it would not be the intent hat the contract would provide for authority to conduct inspection as an official inspection agency at that port.

Mr. BERGLAND. Will the gentleman from Wisconsin yield?

Mr. BALDUS. Yes.

Mr. BERGLAND. Do I understand counsel to say that if the Secretary contracts with a State agency to perform the services at an export point that that agency does not have the Federal seal of approval?

Mr. BOR. I would be an official inspection that would be provided.

Mr. BERGLAND. Establishing him as a Federal inspector is he not giving him the U.S. seal of approval?

Mr. BOR. Yes.

As I said, the type of function that has usually been performed in the past under contract has been contracting with an individual or firm to perform sampling in connection with appeal inspections.

Mr. BERGLAND. If the gentleman will yield further, if the Secretary contracts with the State does the Department absolve itself of any responsibility for supervising that State?

Mr. BOR. No; it does not. It still has the responsibility for assuring that the job was done properly, as is the case when a contract is made by the Federal Government with any other firm, there is a responsibility on the part of the Federal Government to assure itself that the money is being spent properly, and that it is getting a return for the dollar that is being devoted to this purpose.

Mr. BERGLAND. Thank you.

Mr. BALDUS. My concern here is that we may not be making enough difference from the present pattern. The present pattern has shown a lack of training and a lack of uniformity and a lack of trust internationally.

I think we have to take reasonably strong steps to correct that, both in the actual wording of the law and the intent of the law.

I believe that we need to make it very clear that we intend that the United States, through the Department of Agriculture, is the one that is supposed to be doing that. If we leave some provisions for a contract, then there are very very strong obligations to make sure that that is conducted in exactly the way they would have conducted it.

For the reason I prefer to have it at export points where we are dealing internationally, and that we not depend upon either private contractors or States to be the third party, which creates some time lag in enforcement or some doubt as to what our intention was.

The CHAIRMAN. Mr. Fithian.

Mr. FITHIAN. Thank you, Mr. Chairman.

I concur with what Mr. Baldus said.

I think if we recall the discussion between the distinguished vice chairman and other members of the committee, one of the points he raised which I thought was a telling one was the fact that, as of today, the USDA's seal on inspections for overseas grain shipments really did not mean very much.

I think if we were to make it uniform, and we are to get a system in which the USDA's seal means that it really was inspected, and that we can be assured that it was inspected by a Federal inspector under prescribed standards, prescribed by the Department, then

it would go a long way toward remedying the psychological difficulties that we are in worldwide now in terms of the value and the credibility of the quality, and even quantity, of grain shipped by the American exporters.

Therefore, I would like to urge that this is a minimum step, in fact, to make export terminal inspectors, working directly for the Department of Agriculture and not through any intermediary agency, such as a State or otherwise.

I think that we ought to very seriously consider the necessity of making that kind of adjustment, and I think the argument gets to be compelling not to distinguish between ports of export in one part of the country and another. Otherwise, on the floor of the House it would be very difficult, if you are going to single out Texas and Louisiana for some kind of special treatment as States. Therefore, I would strongly urge that we consider making it uniform, and that we do it by whatever amendment the gentleman from Minnesota would offer.

I might even be willing to offer it.

I think that is the minimum we can do and the minimum step that we can take to restore the confidence and the quality of grain shipped from the United States, and thereby, the price it will command on the world market.

Mr. BERGLAND. Mr. Chairman, may I offer an amendment?

The CHAIRMAN. The gentleman from Indiana still has the time.

Mr. FITHIAN. I yield back my time.

Mr. BERGLAND. May I inquire if an amendment would be offered which would delete the Secretary's contracting authority at export points, would that occur on page 3, line 15? And delete the words "or other persons under contract with the Department as provided in section 8." Is that the key?

Mr. BOR. That is one place. You would probably want an amendment to section 8, which appears on page 11, item (3) on line 6.

Before I finish answering your question, I wonder if I might ask a question of you, Mr. Bergland?

Do you have in mind also deleting the—that is, revoking the authority that is provided here to sign a cooperative agreement with the State whereby the State could perform ongoing inspection functions?

Mr. BERGLAND. For grain moving within the State?

Mr. BOR. At export grain locations.

Mr. BERGLAND. Yes.

But limited to export locations.

Mr. BOR. Of course, there are two different problems involved here. One is the problem that arises, that when you do have Federal inspection, as to whether the Federal Government would have authority to contract with an individual to perform particular functions that the Federal Government is responsible for, such as sampling.

Separate and distinct from that there is the question as to whether the Federal Government can sign a cooperative agreement with a State, whereby the State would be responsible for inspection functions at an export port location in that State.

Mr. BERGLAND. I would not object to allowing the Secretary to contract with the State to perform sampling functions, but I want the inspector who is examining the grain and signing the document to be a Federal employee.

Mr. BOR. In that case I think what you want to do is to start with line 17 and delete that "except" clause that begins on line 17 on page 3.

Mr. BERGLAND. "Except that the Secretary is authorized to enter into a cooperative agreement with any State?"

Mr. BOR. And continuing through the balance of the sentence.

Mr. BERGLAND. That would be on line 23?

Mr. BOR. Yes.

If you delete that, the Secretary will not have any authority to enter into a cooperative agreement with a State whereby a State would perform official inspection functions at an export port location. The way the section would read would be that the job would be performed by a Federal employee under contract with an individual or firm, or a particular function like sampling.

Mr. BERGLAND. So the Secretary could contract with the State to do the sampling work?

Mr. BOR. On an ad hoc basis.

Mr. BERGLAND. But he would not be permitted to contract with the State to give the official inspection?

Mr. BOR. To give the official inspection on a continuing basis at export port locations and within that State.

Mr. BERGLAND. Mr. Chairman, I move that the language appearing on line 17 on page 3 beginning with the word "except" to the line 23 ending with the word "section" be stricken from the committee print.

Mr. FITHIAN. In the remainder of my time, I would like to direct this question to Mr. Bor.

Would it not be more appropriate to put a period after "Agriculture" on line 15, and to stop there and delete the remainder, including what Mr. Bergland has suggested?

It would read "* * * by authorized employees of the Department of Agriculture." And then pick up on line 23 "The Secretary may provide * * *"?

Mr. BOR. The only problem with doing that is that, if the Secretary wished, for example, to arrange for a sampling to be done on appeal inspection or original inspection for a particular shipment, then he would not have that authority.

Or, if the Secretary wanted to conduct a test like a protein test through a contract with a private firm, he would not have that authority. He would be limited to the use of Federal employees.

Mr. FITHIAN. Carrying on with this same logic, if you take lines 12 through 14 and read them as they are now written, that is:

The Secretary shall cause official inspection to be performed at export port locations, for all grain required or authorized to be inspected by this act, by authorized employees of the Department of Agriculture or other persons under contract with the Department * * *

It would seem to me that that would mean that we would, by this amendment, be excising the opportunity of contracting with a State, but we would be leaving in, as per lines 13 and 14, the real possibility that the Department of Agriculture could contract with private citizens to do the inspection.

Mr. BOR. If you turn to page 11 of the committee print, you will see that this details the type of contracting function that the Department might have. This is section 8.

In line 6 it states:

(3) To contract with any person to perform specified sampling and laboratory testing and to license competent persons to perform such functions pursuant to such contract;

That is the cross-reference that is intended when you look at the language on page 3, where it says that you can contract with persons as provided in section 8.

Mr. FITHIAN. Let me carry on 1 more minute.

Under the same section 8, Roman numeral II on page 11, I think a legal authority might rule that the Department had complied because, if you contract with private inspectors, it allows them to employ persons to supervise the official inspection of grain in the United States, and of the U.S. grain in Canadian ports. Does that not also apply to section 8?

Mr. BOR. Section 8 says that the Secretary is authorized to license Federal personnel as official inspectors.

The first part of it relates to a case when you are dealing with a private inspection agency, or State inspection agencies, and that is designed to apply to domestic inspection.

The second part of it relates to the type of employee that would be performing the function when Federal inspection occurs.

The third part of it relates to authority that the Federal Government might have to contract with individuals or firms to perform some of the functions that the Federal Government itself is required to perform under the act.

Mr. FITHIAN. I will not prolong this.

The CHAIRMAN. Although the gentleman's time has expired, perhaps someone will yield to him.

I recognize the gentleman from Texas.

Mr. POAGE. I would like to ask a question or two. Would this not stop the grain going to Mexico? We ship a considerable amount of feed grain to Mexico. We ship it by rail or truck. It can move in many places. From Texas it can move into Mexico easier than it can move to the ports. If that grain has to be inspected by an employee of the Federal Government when it leaves the coastal plain, and that is where most of the grain is grown, around Corpus Christi, then if we are going to have to bring an inspector in there from Corpus Christi, which would probably have an inspector, you would have to pay his expenses and you would have to pay him double time, and the cost of the inspection will become so great that it seems to me there would not be any movement at all.

It would kill all of that export business.

Mr. BERGLAND. Would the gentleman from Texas yield on that?

Mr. POAGE. Yes.

Mr. BERGLAND. That point in Texas is already designated as an export point. For example, Davenport, Iowa, which is a long way from an ocean port, is an export point. That grain moves from Davenport, Iowa, to Canada. Presumably there is already Federal inspection at Davenport, Iowa, is there not?

Mr. POAGE. I do not know of any inspectors of that kind that are at inland ports. Certainly grain grown at Beeville, Tex., is ready to be shipped across the border to Monterey is as convenient as to go an American port. It is pretty important to some people.

What I wanted to know is, is this not going to make the cost of shipping that grain so high that nobody will be able to afford to ship it?

Mr. BERGLAND. If the gentleman is asking me, I would have to defer to the expert in the Department of Agriculture or to our Counsel. What about these inland points which are export ports for the purpose of definition?

Mr. BOR. I might just point to line 23 of page 3.

The way the committee print was drafted, it recognized that there are certain interior points in the United States where grain is loaded on some type of a carrier that ultimately ends up overseas. It may be a barge which goes down the Mississippi River which is lashed onto a vessel that moves overseas.

Mr. BERGLAND. Would the gentleman yield at that point?

What about the example cited from the gentleman from Texas, that is, grain going to Mexico?

Mr. BOR. It might be a rail car which is at some interior point and which carries grain to Mexico.

The way this was drafted it would leave to the Secretary's discretion as to whether that type of inspection would be handled under paragraph "e" or paragraph "f"; in other words, whether it would be under the Federal system or under the judicial system where you have State agencies or private agencies involved.

Mr. POAGE. I think the gentleman has answered my question. It probably can move this way.

Mr. BERGLAND. If my amendment were adopted, it would not in any way change that pattern, is that correct?

Mr. BOR. Your amendment would still leave intact that next sentence. So under that next sentence it would be left to the discretion of the Secretary as to exactly how that type of inspection should be conducted.

Mr. POAGE. You mean that the Bergland amendment would not affect this section (f)?

Mr. BOR. The Bergland amendment would not affect that sentence which begins on line 23, of page 3.

Mr. POAGE. Yes.

The CHAIRMAN. Nor would it affect section (f).

Mr. BOR. That is correct.

The CHAIRMAN. The gentleman yields back the balance of his time. Mr. McHugh is recognized.

Mr. McHUGH. I am inclined to support Mr. Bergland's amendment because I think there is a lack of confidence, clearly on the part of the international purchasers of our grain, and this would be the best way to restore that.

However, you made mention earlier of potential disruption and that we should be concerned about that.

Can someone define specifically what types of disruption we would have to be concerned with if we go to a Federal system at the export points? As I understand it, both private and State agencies are now doing the inspection there.

The CHAIRMAN. We are concerned about possible disruption which might result during the period of conversion to a new inspection model, especially if the Secretary is not given sufficient flexibility to

insure that inspection services were available during the transition period.

If, the State and private agencies which now perform inspection are no longer permitted to function at export points, we must provide for a smooth, orderly transition so that the Secretary is not suddenly placed in the position of having an inadequate number of Federal employees to perform inspections. Therefore, in my judgment, we must allow the Secretary sufficient flexibility so that there is always some valid inspection service available at export locations.

The committee print thus contains provisions allowing the Secretary up to 2 years to establish this particular type of new inspection model.

With respect to Mr. Fithian's point, as I understand it Mr. Bergland's amendment striking lines 17 to 23 on page 3 would create an exclusive inspection authority at the ports.

The Secretary would have authority to utilize private individuals or states, I assume, only for part of the work involved in the inspection process.

As counsel said, the first sentence starting on line 12 of page 3 makes the Secretary exclusively responsible for inspection. If you take out the exception, there would have to be some inspection at these ports. He would not be able to use full-time employees of the Department or to contract for partial sampling.

I do not want to take any more of the gentleman's time.

Mr. McHUGH. I think you answered my question, Mr. Chairman.

I would simply ask this. Is that something the Department has indicated it can live with if we adopt that?

The CHAIRMAN. Mr. Galliard is here to respond.

Mr. GALLIART. Is the question in regard to our contracting with outsiders to perform appeal services?

Mr. McHUGH. No. My question is this. If we adopt a purely Federal inspection system at the export points and go to that system here, then is 2 years a reasonable period for the transition to be made without disruption?

Mr. GALLIART. We believe that is a reasonable time.

Mr. McHUGH. I would yield if you would like to answer the point you initially sought to address.

Mr. GALLIART. We do contract with individuals to perform appeal services. It is rare. Occasionally we will contract with a sampler to provide sampling service in a remote area, but basically we perform, as far as appeals are concerned, these services ourselves.

The CHAIRMAN. Do you consider it a Federal appeal even when you contract with others?

Mr. GALLIART. Yes.

The CHAIRMAN. The authority exists within the Department?

Mr. GALLIART. Yes.

Mr. POAGE. Will the gentleman yield?

Mr. McHUGH. Yes.

Mr. POAGE. The gentleman from Minnesota's proposal would require this work be done by employees of the Federal Government or a contract with private concerns.

I do not quite follow his logic in saying that you can do it by private concerns who contract with the Government, but would not do it with

the State. I have as much confidence in the State of Texas as I have in any of our grain traders. I am not objecting to them, but I do not know why you approach it that way. What is the reason for feeling that States would necessarily not do the job as well as the grain traders?

Mr. BERGLAND. If the gentleman would yield, it was not my intention that the print be amended in such a fashion that we would preclude the authority to contract with the State and restrict it to private agencies for some of the more pedestrian services.

I would certainly feel that the Secretary ought to be authorized to be able to contract with the State of Louisiana if he so chose for certain of the lesser functions. This would be subject to the terms and conditions of the contract.

Mr. POAGE. In the bill, as I understand it, the wording that

The Secretary shall cause official inspection to be performed at export port locations, for all grain required or authorized to be inspected by this act, by authorized employees of the Department of Agriculture or other persons under contract with the Department as provided in section 8.

Now, that other persons includes everybody except the States because you suggest we take the States out. At least, that is the way I understand it.

Mr. BERGLAND. Is that true? Do those other persons include State agencies?

The CHAIRMAN. The gentleman's time has expired.

The Chair will take his own time and yield to counsel for the response.

Mr. BOR. If it is the committee's will, we can make it abundantly clear by mentioning the State or other persons.

The CHAIRMAN. As I understand the intent of this amendment it is to make the Federal Government directly responsible for all aspects of official inspection at export ports. The other language, however we modify it, would give authority to the Secretary to make specific ad hoc contracts with private individuals including firms or States to provide services to aid the Secretary in the carrying out of original Federal inspection.

Is that correct?

Mr. BERGLAND. The gentleman is correct.

Mr. POAGE. May I ask a couple of questions? That is the intention, but is there any advantage in saying that you are going to have to have a civil service employee, which costs more than the contracts do. You use the same man, in most cases, because you are not going to get anybody else who is qualified. You cannot pass a grain inspection examination and neither can I. I doubt that there is a man on this committee who can.

You cannot get anybody to do this job to meet civil service requirements for this. The result is that when you do all this by civil service—and I understand that that is what your amendment attempts to do—you are going to get people who are now working for chambers of commerce or somebody of that kind. All you are going to do is pay them at the civil service rate rather than at the contract rate.

You are, of course, going to double the cost of the inspection, and you will have it done by the same people.

I want to know this now. How does that add to the validity of the inspection when it is done by a man simply because he is wearing a

civil service badge instead of contracting with the U.S. Government? The U.S. Government does most of its delicate work this way. Research work is almost all done on contract.

We do some of our most secret experiments under contract.

We contract with universities and scientific groups.

What is wrong with it? Why should not the Government accept that contract work, just as well as to accept that monthly paycheck? Where do you make him a more efficient operator?

The CHAIRMAN. I will not answer for the gentleman from Minnesota because it is his amendment, but I want to be sure that I understand.

It seems to me that the gentleman from Minnesota is suggesting that the Secretary be made responsible for inspection at the export ports. Moreover, he is not to contract the entire process of inspection to a State or private inspection agency, although he could utilize individuals under contract because of his responsibility for carrying out partial functions of the inspection service.

I think it really comes down to where the responsibility lies. Under the provisions of the committee print, interior inspection is to be done through officially designated private firms or State agencies. The Secretary would be authorized to give that designation for up to 3 years, or to withdraw it after notice and hearing.

Mr. Bergland's proposal would make the Secretary primarily responsible for inspection at the export ports. Though he could go to particular individuals to perform specific contract functions, he would remain the exclusive agent.

To answer the gentleman from Texas' question, I think even the committee print anticipates that the Secretary would have to take on additional personnel, even at inland points where the Federal Government for the first time could provide original inspection, to perform civil service type functions.

We, of course, would have to waive civil service requirements so that existing inspectors who were technically proficient could obtain Federal positions.

If, however, the Secretary felt that some of the aspects of inspection, such as sampling, could be performed more expeditiously or at less cost than by hiring a direct civil service employee, I believe he would have authority to enter into temporary contracts.

Yet, the inspection would be performed neither by the State nor by a designated private firm but, rather, by the Secretary who remains directly responsible for the activities carried out under that contract.

Mr. POAGE. This building was built by contract. What difference does it make whether the U.S. Government employed everybody who did it and employed the architect and the engineers under civil service, or whether they did it by making a contract with somebody to turn it out? What we were looking for was the results.

We turned it out a good deal cheaper by letting it out for someone in the business. That is the reason we do it that way, because it is cheaper.

I think I understand what the gentleman wants. I think he wants, and I want, to make this port inspection something that is credible in everybody's eyes, and something that everybody will accept.

I agree with him on that, but I cannot see how it is going to add

anything to the validity of the U.S. Government's certificate to determine just under what basic the work was accomplished.

The CHAIRMAN. The time of the Chair has expired.

I recognize Mr. Moore and then Mr. Melcher.

Mr. MOORE. Thank you, Mr. Chairman.

I am a little confused about what is going on here. As I understood the gentleman from Minnesota, I think he wants more than just responsibility of the Secretary of Agriculture. I believe he actually wants Federal inspectors on the site doing the principal or most important part of the grain inspection. Let the record show that he is nodding approval to that comment. So he is interested in more than what the Chair has outlined.

I understand the problem. I have listened to Mr. Bergland. I have great respect for him. I am not a grain farmer and I do not know much about it, but certainly if there is something wrong in what is going on today, and farmers do not get their just return for the crop they have raised or for the sale of their grain overseas, then I am just as concerned as he is.

But I am also at the other end of the funnel where the grain comes out in Baton Rouge, which is the seventh largest port in the Nation. We have a tremendous Cargill elevator there. We ship an awful lot of grain.

In Baton Rouge I have been told that it is all done by State inspectors or Port Commission employees.

I have also been told that there have been investigations by the Attorney's office there, and since the uproar in New Orleans, they have uncovered to date no wrongdoing. Inspection there has been proper.

I wonder if we are not overreacting a bit by walking in and telling the State inspectors in Baton Rouge they are finished while we know that there has been no wrongdoing uncovered there. My law firm represented the people running that port. It is sort of an insult to them to say "Gentlemen, you run a clean ship but because of some who did not in New Orleans, we are going to replace you and let the Federal Government come in and do it." I do not think that is fair to them. It is a little bit against my philosophy of government in that, if the State is doing the job properly, to replace them with Federal officials is unjust.

I do not think it makes sense either governmentally or economically. I think we have found Federal corruption as often as you find it anywhere else.

I think the thrust of the probe in New Orleans, which uncovered various problems, is the problem of private inspectors. I understand the concern here, but to also put the gun barrel at the State inspectors may be overreacting and going too far.

I am not sure there is any evidence in our hearings to justify that, that is, to replace State inspectors at export points.

I would urge that we not do that, and that we either rephrase Mr. Bergland's amendment or turn it down.

I do not think that is fair to the inspectors who are doing their job at the State export points, such as in Baton Rouge. I am sure there are others across the country who would fit the same mold.

There is no question, from what I have heard from our ports back home, that changing to Federal or State inspectors or all Federal

inspectors, and not allowing any private inspectors at all at the export points, is really going to cause shakeups in existing export business.

I do not know about the Memphis Board of Trade, but the New Orleans Board of Trade would be forced out of business, I am told. Of course, they are the fellows that got involved in this to start with.

I am suitably embarrassed that my State was the one that caused headlines and brought this about, and I am suitably embarrassed if there was anybody in Louisiana who was dishonest in grain inspection.

But I would hope that we stay the temperamental wisdom of this committee and aim it at those who deserve it, and not at those who do not.

I would ask that we preserve the State system at export points. The only one I am aware of is in my own hometown. There would seem to be no problem there at present. I have heard no evidence that the inspection process has broken down elsewhere. What we have heard is that in New Orleans, La., there are a number of people who had a conflict of interest and they allowed that to get in the way of exercising their duties. They will pay for it.

I will go along with the committee in drafting something to prevent that happening in the future.

Mr. BERGLAND. I am informed by counsel that the gentleman is correct. There have been no State employees indicted for violation of the Standards Act, or charged with fraud, or embezzlement, or anything.

Mr. MOORE. I thank the gentleman for that.

The CHAIRMAN. Will the gentleman yield?

Mr. MOORE. Yes.

The CHAIRMAN. Let me try to clarify just what this amendment does.

For interior inspection, it would authorize the Secretary to designate official inspection agencies from the private sector or the States in addition to allowing for original Federal inspection if necessary.

What Mr. Bergland's amendment does at export points is to eliminate the Secretary's authority to enter into cooperative agreements with the States to perform the entire inspection. It would retain, however, the Secretary's authority to use private personnel in addition to Government civil service employees to perform parts of the inspection service under his direction and direct control.

I think we need to consider what happens if the Secretary wished to terminate this relationship. Under the committee print as it now stands, at an inland point, he would have to give notice of hearing.

If at an export point he wished to terminate the relationship with a State, he would have to revoke the cooperative agreement.

Under Mr. Bergland's proposals, the Secretary could simply decide to terminate a contract for some partial services with the State or with the private sector. Is that correct?

The Chair recognizes Mr. Melcher.

Mr. MELCHER. I am certainly in favor of this amendment being offered by Bob Bergland.

It is not unusual to say in a piece of Federal legislation that the responsibility for carrying out a very critical function for farmers

is a responsibility of the Secretary, or for this legislation to say that it is the responsibility of Federal inspectors to inspect at the export points.

I think it fits. We do not insult Louisiana or Washington or Oregon or Minnesota by saying that grain bound for export will be federally inspected.

That is not a States rights issue. It is normal procedure in this type of legislation.

We have a really big interest in Montana, speaking for wheat farmers, that the inspection is federally done.

The responsibility is there, whether done directly or by cooperative agreement.

I think that direct Federal inspection better serves our purpose than the contract arrangement.

Like so many wheat-producing States and corn-producing States, Montana is inland. We have no port. So Montana farmers who have an awful lot at stake in how exported wheat is handled, would be better assured that the grain inspection scandals do not recur if the Federal presence is there right down to the final inspection.

When we get to the part of the bill that deals with protein determination, I would hope that the committee would also require that that be federally done. We have had a very serious example in Montana of being ripped off on the percentage of protein in wheat. It was brought to our attention by a small grain elevator where they had had a protein test done in the State by the State laboratory, and then sent it out to Portland for export. Consistently the protein tests on those same shipments at Portland would be lower than that done by our State.

By showing a lower protein level, the wheat was worth less. The protein level determined in Portland set the price that was paid for that wheat. The Montana elevator was ripped off in relation to the Montana State tests by thousands of dollars.

There is an investigation now being conducted by the U.S. attorney in Portland. It is going on to determine whether he can detect fraud.

Mr. MOORE. I do not think the gentleman has made a case that State inspection is inadequate. I think by his own example of Portland he is describing private inspectors.

Mr. MELCHER. I am not sure whether the west coast tests were all private inspectors, State inspectors or both.

Mr. MOORE. State inspection has been going on for some time. I am submitting that. I do not think we have evidence yet that this is what has broken down in the system. I do not think it is valid to simply say or ask for the reply, why should a Federal inspector be better than a State inspector. What assurance do you have?

Mr. MELCHER. I am not making that case. I am not attempting to make the case that State inspection has been dishonest. Whatever dishonesty there has been, it has been my understanding that it has been in the private inspection sector.

I merely say that when we draft Federal legislation to regain the confidence of our American farmers, that they are not being ripped off. I think we can do a better job by going right to the point of focus with Federal inspection at the ports and say that it will be federally inspected. It is consistent. It is a means of assuring the farmers in inland States that their rights are going to be better protected.

I might say that Congress should have, and this committee in particular, should have a little better control over the degree of honesty if these are Federal inspectors.

I think it just fits our purpose better to make it Federal. I am not trying to say that there is anything wrong with the State inspection.

Mr. MOORE. I accept that.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Baldus?

Mr. BALDUS. Mr. Chairman, I think it is necessary to point out again, because we may have lost sight of it, and this may respond to Mr. Poage's problem also, that what we are really talking about at this point is inspections at export port locations, meaning ports loading on ships.

Mr. POAGE. No.

Mr. BALDUS. It says export port locations.

Mr. POAGE. El Paso is a port.

The CHAIRMAN. The bill defines what an export port is. "The term 'export port location' means a commonly recognized port of export in the United States or Canada, as determined by the Secretary of Agriculture, from which grain produced in the United States is shipped to an area outside the United States."

Shipped, does not mean only by oceangoing barge. It could be truck or whatever.

Mr. BALDUS. On that point we go down further where it says: "The Secretary may provide that grain loaded at an interior point in the United States into a rail car, barge, or other container as the final carrier in which it is to be transported from the United States shall be inspected. . . ." That then is an export point also being shipped from here to there. The only difference is the Secretary's designation.

The CHAIRMAN. Yes, the difference is that the Secretary has to identify export ports. Whether a specific port is actually an export facility or not depends solely on what the Secretary determines it to be. There are some inland areas which, although they are commonly recognized as export ports, have not received such a designation. At such locations, therefore, the Secretary could use either private or State inspection if he wished.

Mr. BALDUS. By virtue of this bill it is an altogether different set of rules.

I think those of us who are interested in controlling most of the grain that is shipped to other countries and excepting the grain that Mr. Poage is talking about, which is across the border: perhaps what we need is a better definition of what the Secretary may call an export port.

I would hope, and I understand that an export port would be that kind of a port that has facilities for loading a considerable amount of grain, and it is a major terminal. So the problem that Mr. Poage was talking about of having to get someone to go to some little place probably would not be the question that we are addressed to at all.

The terminals would be identifiable and there would be a flow of grain through those ports that would sustain them.

I would like to yield to counsel on this.

Mr. GALLIART. The Department recognizes that there are commonly recognized ports in this country. They are on the gulf and on both coasts, and on the Lakes.

We have a list of points that we consider as ports. Baltimore, for example, is a port.

Mr. BALDUS. That is established now?

Mr. GALLIART. Yes. Galveston, Tex.—

Mr. BALDUS. Are any of those more remote places that we would occasionally have to send someone over at a great cost in double time and so on? Or would it be usual that you would have, following the wording of this bill, an official U.S. employee to do the inspection?

Mr. GALLIART. I am not sure I understand your question.

If you are saying that the Department could have employees at these ports to handle the business of the day, yes we could have, and would have. We presently perform Federal supervision at all of the port locations.

Mr. BALDUS. You said earlier that sometimes there was a contact let to an individual, but it was very rare. You said that had been a pattern. You said it would not be a problem if you did not have that authority.

Mr. GALLIART. Correct.

Mr. BALDUS. I am going the other way on this.

I would opt that at the export port locations we not have a contractual arrangement either with the States or with private persons.

I am asking how much of a handicap that would be if it were that way.

Mr. GALLIART. We would not have a problem contracting with an individual or a State to do certain of the inspection functions.

Mr. BALDUS. I am talking about not having the contractual ability.

Mr. GALLIART. If we did not have the authority to contract, we would do the inspection ourselves.

I may not be understanding your question.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Hagedorn?

Mr. HAGEDORN. We studied this option earlier and we defeated it quite heavily. We went from Federal to State, and then from State to private. I guess I am wondering that in trying to develop legislation to deal with problems that have been identified in the grain inspection industry, it seems to me that we have not seen any conclusive evidence that the State agencies have been in violation of the law.

Therefore, I question of the judgment as to whether we should have Federal licensing or employees to carry out the functions. It would appear to me that we have a good system established, and we should not respond in this way. If it is not a problem, it should be left intact as it is today.

Therefore, I will oppose the amendment.

Mr. BERGLAND. I incorrectly stated a while ago that Davenport, Iowa, is an export port. It is not true. Davenport, Iowa, does export grain but it is not designated by the Department in that way.

Mr. HAGEDORN. The port of Duluth has a State inspection agency which would have to be totally federalized then for all export commodities?

Mr. BERGLAND. That is correct.

Mr. HAGEDORN. I will yield to Mr. Moore.

Mr. MOORE. I will continue the comments made by the gentleman from Montana. I do not mind if you want to enact something that has

a Federal supervisor to doublecheck State inspection. I just do not think we have any evidence so far or any case histories to justify replacement of State inspectors.

We will go to a great deal of expense and be criticized by the taxpayers, and we are telling all the State departments of agriculture that they have done a good job, but we are going to replace them. I do not think it makes good sense. That is the kind of philosophy that caused the Federal Government to be the cancerous size that it is now.

If the people are doing their job properly, I do not see any reason for replacing them. They should be left to their work and we should attack the problem and not attack the people who are doing their jobs and really have no reason to be replaced.

I do not think that you can justify saying that we are going to put in Federal inspectors and that there is going to be any greater security for anybody. Maybe Montana people feel safer with Federal people, but it seems to me that the Federal Government often does things in an overkill basis, with overexpense and inefficiencies unlike some State operations. I do not think you can justify changing this system to all Federal inspectors at export points on the grounds that we think it is a better way of doing it, although we have no current evidence to show that there are any problems at that level.

I think that we may create legislation without a real basis of understanding and make a mockery of the hearings and the evidence produced to this date.

MR. BRECKINRIDGE. Mr. Chairman, I would like to say to the gentleman from Minnesota that it is not necessary to federalize each inspection service for the purpose of reestablishing the credibility of the United States. It is necessary that we hold responsible those parties who have the responsibility. That would, in my view, exclude private agencies.

However, we are accustomed to those systems whereby at the State level we trigger Federal action. I think all we need do here is to establish that criteria and specify that those standards at the local level shall be administered by those State agencies which have the power, and the competence, and the responsibility as the record discloses; we should establish further that upon a dereliction of that duty or the failure to carry it out properly, then and thereupon the Federal inspectors shall in fact take over. That is, until that system is rectified.

That leaves in place the responsibility at the State level, and it should be there. It does not impose the Federal responsibility.

It does establish the integrity of the inspection service and we hold them responsible to insure the integrity of the service.

I would personally support a provision that would empower States to continue their inspection services for so long as, and only so long as they do so properly. The Federal service would take over in the event of a failure.

MR. MOORE. I concur with the gentleman from Kentucky.

MR. HAGEDORN. To have that process would be to have the current legislation.

THE CHAIRMAN. The present committee print anticipates that the Secretary may, at his discretion, contract with a State for the performance of inspection services at ports.

The Secretary is not required, however, to recognize any State inspection agency for any purpose or to enter into a cooperative agreement unless he wishes.

By simply declining to enter into a cooperative agreement, the Secretary could, in effect, have all Federal inspection at the export points.

Mr. THONE. Mr. Chairman?

The CHAIRMAN. The Chair recognizes Mr. Thone.

Mr. THONE. I would assume, then, that the Secretary could have such a cooperative with the State of Louisiana and not with New Orleans interests; that is, in Baton Rouge, and not in New Orleans, is that correct?

The CHAIRMAN. As I understand it, the Secretary could, by entering into cooperative agreements, authorize a State to perform inspection services either for the entire State or for any export port within the State. Will counsel correct me if I am wrong.

Mr. MOORE. Will the gentleman yield?

Mr. THONE. Yes.

Mr. MOORE. It is my understanding that the inspections in New Orleans were conducted by the chamber of commerce and the New Orleans Board of Trade. There were no Federal inspectors there, whereas in Baton Rouge they were all State.

Mr. THONE. I yield to Mr. Krebs.

Mr. KREBS. I yield to Mr. Fithian.

Mr. FITHIAN. I think we have lost sight of this. On grain that is exported, the certificate does not bear the great seal of the great States of Indiana, Texas, and Louisiana. It bears the seal of the United States. It is the USDA inspection.

Therefore, we are not at all infringing or denigrating any State to say that it is a USDA inspection and seal, and thereby to the extent possible, it is the USDA guarantee of the quality of the grain inspected.

I would ask, before our final vote, that counsel comment on the validity of my analysis here, and that by leaving the 13, 14, and 15, we do accomplish what the chairman has summarized that we do accomplish. I am talking about page 3. I raise that question.

If the chairman's analysis is that by leaving those lines in and striking, as the amendment would have us strike, from line 17 on, that we arrive at a Federal inspection system at the port of export, then I am very happy with it.

The CHAIRMAN. I think you misunderstand what I said.

If you leave the present language of the committee print intact, the Secretary could, by cooperative agreement, limit that under the committee print.

However, if you eliminate what Mr. Bergland suggests, I do not think it would be possible.

Mr. FITHIAN. I understand that. My question is that by not putting a period after the word Agriculture in line 15, of page 3, and if by not putting it there and starting the striking at line 17, which the Bergland amendment does, whether or not we do what your earlier definition was.

Would the counsel comment on that?

Mr. BOR. If you were to delete everything beginning with line 17 through the balance of the sentence, you would have a purely Federal

system at export port locations, but you would retain, with the Federal Government, the authority to contract out particular functions on an ad hoc basis, such as the function of sampling in connection with appeals.

They could not contract out on the job of conducting an official inspection on a continuing basis at an export port location.

Mr. KREBS. It would appear to me that we have discussed the pros and cons of this issue at great length. In light of this fact, I move the previous question.

The CHAIRMAN. The gentleman from California moves the previous question on the amendment of the gentleman from Minnesota, Mr. Bergland, striking from line 17 through the period on line 23.

Without objection the previous question is ordered.

All those in favor of the Bergland amendment so signify.

Mr. MOORE. Mr. Chairman. I ask for a rollcall.

The CHAIRMAN. The gentleman from Louisiana asks for the ayes and nays.

Respond aye if you are in favor and nay if you are opposed.

The clerk will call the roll.

[The rollcall follows: Ayes: Representatives Vigorito, Melcher, Bergland, Brown (by proxy), Rose (by proxy), Litton, Richmond (by proxy), Nolan, Baldus, Krebs, Harkin, Hightower, Bedell (by proxy), Fithian, Jenrette (by proxy), D'Amour, Weaver.]

[Nays: Representatives Poage, Jones of Tennessee, Bowen, English, Wampler, Sebelius, Thone, Symms (by proxy), Johnson (by proxy), Madigan, Jeffords (by proxy), Kelly (by proxy), Grassley, Hagedorn, Moore, Foley, McHugh.]

The CHAIRMAN. The clerk will report the results of the vote.

The CLERK. Seventeen ayes and seventeen nays.

The CHAIRMAN. Seventeen ayes and seventeen nays, the amendment is not agreed to.

Are there other amendments?

Is there other discussion?

Mr. BERGLAND. I have a question, Mr. Chairman. On page 5, line 18, it reads:

Not more than one official inspection agency for carrying out the provisions of this act shall be operative at one time for any geographic areas as determined by the Secretary to effectuate the objectives stated in section 2 of this act.

And it goes on from there. May I ask what the reason for that might be?

Mr. BOR. You are probably referring to the grandfather clause of the last three lines of that section?

Mr. BERGLAND. I am wondering why not more than one agency can be operative at any one time for any geographic area.

Mr. BOR. The idea here was to have one agency, and only one agency, responsible for carrying out inspection service at a particular point, so that responsibility could be fixed for the job. What it does is to reduce the necessity for additional supervision by the Federal Government.

Mr. BERGLAND. In other words, the Secretary can grant an exclusive franchise through the private service for a given location?

Mr. BOR. That is correct.

Mr. BERGLAND. Is that the customary practice?

Mr. BOR. As I understand it, that is pretty much the way it is being done now.

It is just preserving the system that has been used in the past.

Mr. POAGE. It seems to me that there is some logic to this because if you had two different inspection services, these would involve a matter of judgment, and if you have two inspectors inspecting the same grain, they will come up with their own grade.

If you have two different inspection services, and then the trade began to understand that one was more likely to read a little higher than the other, and that always happens, would you not be opening the door to a situation where everybody would seek to go to the one who gave the higher grade?

Would we not find that it would not always work out that way? You would have an intolerable situation among the people who were asking for grades. If you gave them a choice of going from one grade to another, they would shop around and find the one that would be most likely to serve their purpose.

Mr. BERGLAND. I think the gentleman is correct.

I have no problem with this section, but I see some advantages in having the responsibility fixed in one agency, and the Department can maintain better control.

Thank you, Mr. Chairman.

Mr. MOORE. I would just like to make a point here.

This letter, which everybody has been given, dated November 6, contains a list of private inspection agencies. It shows on the first page under Port Allen, La., which is across the river from Baton Rouge, that the Greater Baton Rouge Port Commission is indicated by the flip of a coin that it is in a top situation. This agency was created by the Governor and there are no private funds involved whatsoever, only public funds. I call the commission a State agency, but there is some disagreement from USDA. They think it is a quasi-State agency, but I wanted to clarify the situation for the record. I do not want anybody to have the wrong impression, as in my opinion, this is not a private group like these others at all.

The commission employees are simply State civil service employees.

Mr. BERGLAND. I have another question on page 6.

On lines 18 through 20 the fee assessed against an inspection agency is calculated at an annual rate prescribed by regulation of the Secretary, based on the volume of grain to be officially inspected by the agency in the preceding year and at a rate prescribed by regulation based on the number of certificates issued and so on, and so on.

The term "preceding year" troubles me somewhat.

We may have a given year with a high volume of grain moving from an export location, and in another year it may be drastically reduced for some reason. It would seem to me that that could place the agency in a very difficult position.

Would it be more appropriate that the term "preceding year" be replaced with "a normal year" or something that would not fix the fee based exclusively on the volume of the preceding year.

I think that could lead to some difficulty.

The CHAIRMAN. I think the gentleman has raised an interesting point. Perhaps the Secretary should be given authority to determine the fee on appropriate criteria, including the volume of the grain ex-

ported in the preceding year. That would give him some opportunity to consider what his estimates might be of grain moving in the current year. If there were indications that the volume might be greatly reduced, it would no doubt be wise, from an administrative standpoint, to allow the Secretary broader discretion than the language of this bill provides.

MR. GALLIART. Yes; I think so. I personally would have no problem with that.

MR. BOR. The last two lines of that page have some language which may well be used for this purpose. You could say that the fee should be based on the anticipated volume of grain to be officially inspected, as determined by the Secretary.

The CHAIRMAN. Would the gentleman like to make that motion?

MR. BERGLAND. I so move.

The CHAIRMAN. Is there any discussion?

If not, all those in favor of the amendment of the gentleman from Minnesota signify by saying aye.

Those opposed?

The amendment is adopted.

MR. BERGLAND. I have some amendments concerning conflict of interest.

The CHAIRMAN. If the gentleman does not mind, perhaps this would be a good time to consider adjourning the committee.

The committee will stand adjourned. We will meet for further consideration of grain inspection at 10 o'clock on Monday.

The Committee on Agriculture will stand adjourned.

[Whereupon at 11 :50 a.m., the committee adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

MONDAY, NOVEMBER 17, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, Vigorito, Jones of Tennessee, Bowen, Breckinridge, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, D'Amours, Sebelius, Thone, Johnson, Hagedorn.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; Gene Moos, staff analyst; Steve Allen, staff consultant; Glenda Temple and Susan Bell, staff assistants.

A quorum not being present, the meeting was adjourned.

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, NOVEMBER 18, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:00 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Bowen, Rose, Litton, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, D'Amours, Wampler, Sebelius, Thone, Symms, Madigan, Heckler, Jeffords, Grassley, Hagedorn, and Moore.

Also present: Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; Gene Moos, staff analyst; Steve Allen, staff consultant; L. T. Easley, press assistant; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Agriculture Committee will come to order.

The clerk has informed the Chair that a quorum is present.

Without objection we will resume consideration of the committee print amending the U.S. Grain Inspection Act to improve grain inspection and the operation of official inspection agencies, and for other purposes.

Mr. BERGLAND. Mr. Chairman, I am not sure I have an amendment. I need some information first. On the question of intimidation of inspectors, I cannot find the word "interference." As a matter of fact, I cannot find the proper reference in the bill.

My question is this. Does the amendment protect the employee from what may be considered to be interference on the part of someone who may attempt to impede his work?

Mr. BOR. The section that deals with intimidation is in the criminal provisions that begin on page 23 of the bill.

Section 15 of the bill makes the general Criminal Code applicable to employees of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions.

Another section of this bill extends that protection to inspection personnel who are working for official inspection agencies, such as State agencies, and the private inspection agencies.

Mr. BERGLAND. What does that code contain?

Mr. BOR. The Criminal Code makes it a felony to assault, intimidate, or kill any people that fit the category of people included in the code investigative, the committee print would add to this category

inspection or law enforcement personnel working for the Department of Agriculture, or people who are working as licensed inspectors for the official inspection agencies.

Mr. BERGLAND. What about attempts to interfere or impede the work of an agent?

The CHAIRMAN. I think the criminal provisions were to be presented as an insert. Is that correct?

My copy of the bill on page 24 has section 14 and section 17.

Mr. BOR. I think it is an error in the numbering.

Section 17 which should appear as section—excuse me, section 17 is a correct number.

The previous page, that is, page 24, has section 16 which amends section 14 of the Grain Standards Act.

Then page 25 has section 17, which amends section 8 of the Grain Standards Act.

The proviso clause in section 17 of the committee print extends the protection of the Criminal Code to the licensed inspectors when they are acting in the performance of official inspection functions under rules and regulations prescribed by the Secretary.

Mr. BERGLAND. In that section, reference is made to section 201 of title 18, and also to section—I do not know what that reference means.

I want to make it against the law to interfere, or harass, or intimidate, or browbeat, or in any way attempt to obstruct the workings of the inspectors.

I do not know if this code is clear in that regard or not. I can understand being disallowed to kill someone.

Mr. BOR. It goes further than that. It goes to intimidation as well.

Mr. BERGLAND. It does?

Mr. BOR. And there is another section that deals with bribery. It covers those three different types of offenses.

The CHAIRMAN. Is counsel saying that the word "interference" does not include the reference to title 18?

Mr. BOR. That is included in the title 18 statute.

The CHAIRMAN. Interference is included in title 18?

Mr. BOR. Intimidation. I am not sure the word "interference" is there. I think "intimidation" is the critical word that they use in the code.

The CHAIRMAN. Will the gentleman from Minnesota yield?

Mr. BERGLAND. Yes.

The CHAIRMAN. We might encounter some difficulty in making it a felony to interfere with inspectors since the definition of what constitutes interference might be subject to some debate. How far does the committee wish to go in defining interference?

Mr. BERGLAND. I want to be sure that an inspector who is trying to do his job honestly is not going to be interfered with by some person who thinks that the inspector will find something that that person wants to keep covered. There are many ways it can be done. I want to make sure that the inspector is armed with the proper authority to do his job.

I will talk with counsel about this, Mr. Chairman.

The CHAIRMAN. Any threat of bodily harm or other physical intimidation would be covered by the statute. Is that not correct?

Mr. BOR. That is correct.

In addition to that, bribery would also be covered, so this is two types of interference that would be covered.

Mr. BERGLAND. What sort of construction is put on the word "intimidation"?

Mr. BOR. I think it relates to fear of bodily harm.

The CHAIRMAN. All of the bribery statutes, as I recall, involve not only promises of payment, but threats of harm or disadvantage. Am I correct?

Mr. BOR. Yes.

The CHAIRMAN. Then if you threaten some disadvantage to the individual, that is covered by the bribery statute. In other words, a bribe does not have to be inducement of a positive nature.

Perhaps counsel can look that up.

Mr. BERGLAND. I would appreciate that very much.

Another question is this.

I am not quite sure of my ground here. I have been informed that the Federal supervisors keep a rather regular schedule of 9 to 5, and they do not necessarily have supervision in odd hours, is that correct? If that is true, I think, Mr. Chairman, that it is a matter we should address, because it seems to me that Federal supervisors ought to be encouraged to move in at 2 o'clock in the morning, if they think it is more appropriate.

Mr. BOR. I understand they do perform overtime work. I am not sure to what extent this has proved a problem in the past, but they do perform overtime work.

Mr. BERGLAND. I think there ought to be supervision in some way. It is not prohibited by law, but I think it is a matter which ought to be considered. Overtime means they appear on the job after the regular 40-hour week. Do you know whether or not they have shifts, that is, the supervisors and inspectors who work around the clock, or are those inspectors only on the job from 9 to 5, and the other hours and the weekends they go without supervision?

Mr. BOR. I do not know for certain what the answer is. I suspect, however, that the situation is that they work regular hours and put in whatever overtime is required to perform supervisory functions at a time when it needs to be done after hours.

I doubt that there are arrangements for three shifts during the day.

As a matter of fact, part of the problem in the past is that they have not had sufficient supervisory personnel to "cover the waterfront". Recently they had additional appropriations provided for in the agricultural appropriations bill to enable them to hire the necessary additional supervisory personnel.

Mr. BERGLAND. I want to reserve the right to return to this question later on. I think we ought to find out exactly how this works. We may be opening ourselves up to all kinds of trouble if we have supervision of Federal inspection during the 40-hour work week. There are another 120 hours.

The CHAIRMAN. Perhaps the staff could check with the inspection service on this point.

Mr. BOR. Mr. Galliard will be here in a few moments. Maybe he can respond.

Mr. HARKIN. I have a series of several amendments. I do not know in what order to proceed. Are we taking the bill at any point?

The CHAIRMAN. The bill is open to amendment at any point.

Mr. HARKIN. Mr. Chairman, I then have an amendment.

The CHAIRMAN. The gentleman will state it.

Mr. HARKIN. I move on page 26 to strike all of section 20.

Mr. BERGLAND. Is the gentleman speaking of 26 and 27 of the committee print?

Mr. HARKIN. Yes; through line 15 on page 27.

The CHAIRMAN. The gentleman from Iowa, Mr. Harkin, is recognized for 5 minutes.

Mr. HARKIN. I read over section 20. All it appears to me is nothing more or nothing less than a gag rule. For example, (g) on page 27 states that,

Any present or former officer or employee of the Department of Agriculture or of any official inspection agency . . . who shall make public any information obtained under this act except pursuant to authority from the Secretary or a court order or otherwise in connection with law enforcement proceedings by the Federal Government, or pursuant to a request from a committee of the Congress, shall be guilty of a misdemeanor.

It seems to me that one of the ways in which a lot of these inspection problems were brought to light was because certain people saw fit to talk outside of the normal work environment, to talk to reporters, to talk to other interested parties, to bring to light the discrepancies that were taking place at the export facilities.

I think to put a gag rule like this in the bill is to put a chilling effect on any conscientious employee who may see things that are not quite up to par, things that are not legal, and things that are happening in the grain inspection trade. It will put a chilling effect on that person from making these things public.

After all, we are talking about public inspection. That is the whole basis of our examination of this entire act, and amending it, and revising it, in order to make it a more public inspection.

We want to make more of these facts known.

So, I move to strike that section which, as I say, is nothing more than a gag rule.

Mr. POAGE. Will the gentleman yield?

Mr. HARKIN. Yes.

Mr. POAGE. I had nothing to do with putting this in here, but is it not the purpose of this section to protect the business that goes through the hands of these people, that is, if these people give out the amount of grain that one company is shipping to another company: Is that not entirely out of line and destructive of business practices? Is not the purpose of this to try to reach a reasonable compromise between our desire to have everything known and in the open, and our necessity to protect business secrets?

I suppose that is what this is for, and it seems to me that it will give an opportunity to the Secretary and to the courts, and the Congress, and gives any other enforcement agency the opportunity to get the information if they want it.

Is it worth enough to publish this on a bulletin board?

Mr. HARKIN. I do not know. It seems to me that there are not too many trade secrets involved here. I would not mind the part of the bill that spoke to trade secrets.

Mr. POAGE. Is it not important to one company who is shipping

to, let us say, Houston, to not have their competitors know just how much grain is moving through there to give them time?

If I understand it, what you are saying would be the effect of the amendment, is that if a company wants to ship grain through New Orleans and another company is shipping it through Houston, then the information would have to be made public, and could be made public.

Would it not have a disastrous effect on some of the companies who do not want their competitors, at a given time, to know what they are shipping?

Certainly, we should not require that the competitor know everything.

Mr. HARKIN. It would seem to me that if Cargill, Cook, or if any of the other ones wanted to find out just how much was being shipped, they could have their spies at those locations simply count the ships.

This is like General Motors does to Ford and vice versa.

The CHAIRMAN. Will the gentleman yield?

Mr. HARKIN. Yes.

The CHAIRMAN. Part of the problem is that if you remove this provision, it might be possible for any inspection service employee to go on the payroll of a competitor or to take some opportunity to report to another competitor the information that came into his hands in the course of an official inspection.

When the statute was drafted in the committee print, it originally said "except as authorized by the Secretary." I suggest adding the words, "on court order, or subject to a law enforcement proceeding, or by request of a committee of Congress." If, for example, we wanted information, the employee would not be able to say he could not release it because of the statute. Your time has expired, Mr. Harkin.

The CHAIRMAN. I recognize counsel.

Mr. BOR. I would like to give a word of explanation concerning this section.

There is currently in the Grain Inspection Act a provision very similar to this. I will read it. It applies to any officer or employee of the Department of Agriculture.

Mr. HARKIN. Where is that. Counsel?

Mr. BOR. This is in the Grain Inspection Act, section 17(g).

It says:

Any officer or employee of the Department of Agriculture who shall make public any information obtained under this act by the Department of Agriculture without its authority, unless directed by the court, shall be guilty of a misdemeanor, and upon conviction subject to the penalties set forth in section 14 of the act.

What this revised section does is several things. No. 1, it extends that coverage not merely to an officer or employee of the Department, but also to former officers or employees of the Department, and also to an employee of any official inspection agency.

Second, it has more escape clauses. The current act would make subject to these penalties provisions USDA personnel who divulges the information unless authorized by the Department, or unless directed by a court.

As the chairman pointed out, the committee print has an escape clause to cover any law enforcement proceedings, even though you do

not have a court order, and also any requests from a committee of the Congress.

So, it in effect loosens the provisions that are currently in the act in some respects.

The reason for this kind of a provision is what was described earlier, namely, an attempt to protect trade secrets and make it easier for the inspection officials to get whatever information is necessary to carry out their functions.

Mr. HARKIN. Would that not be possible by just limiting the provisions of this to amounts that are being shipped, for example?

That is, rather than covering any information?

It would seem to me that under the provisions of the act, that is section (g), that those officials who talked to reporters and gave out a lot of information—and I would say that this was the starting point of the whole investigation—that these people are not liable for prosecution? Are they? It would seem to me that they are.

The CHAIRMAN. I am not sure that the information given out to reporters was material covered by the provisions of this act. What was given out was information concerning abuses of inspection authority, bribery, and other misfeasance on the part of inspectors. I do not think that this is what we are discussing.

Mr. HARKIN. It would seem to me that any information obtained under the act which pertains to grading and weighing would be concerned.

Mr. POAGE. The act does not provide for that.

Mr. HARKIN. But you obtain information about actions——

Mr. POAGE. About grade. And those are the things that are contained under the act.

The CHAIRMAN. The gentleman raises a difficult point. I raised that same question.

A problem would be created, however, if we were to wipe out prohibitions against disclosure. In the case of spies or espionage, you would only open the door for official inspection personnel to be suborned by one firm to give such information as destinations and amounts of grain going through another competitor's shipping point.

Mr. HARKIN. With the present reporting requirements that we have, the Secretary of Agriculture has to report large shipments to foreign countries, then we are only talking about five major grain companies. I cannot imagine that they have all those secrets from each other.

I have a feeling that they know what each other is doing all the time. So I think the effect that this provision has is not to stop that, but to stop those personnel that may see wrongdoing and want to get the information out, but then would be told by their employers, or by the large grain companies that they had better not, because if they do they would be liable for prosecution under this act.

That is the way I read it.

The CHAIRMAN. I recognize Mr. Thone.

Mr. THONE. Mr. Bor has now clarified the point that I wanted to address.

As I understand this, Mr. Bor, amendment (g) broadens the old section 17(g) to include former officers and also expands it to official inspection agencies, or any present or former licensee, is that not the thrust of the language?

Mr. BOR. That is correct.

Mr. THONE. I am inclined to agree with Mr. Harkin. I do not understand what delicate trade secrets could be involved and how the market would be so affected by any information of this type.

I cannot see how it would be taken any another way than as an amendment of the law after these disclosures to provide, as Mr. Harkin pointed out, a chilling effect on any persons or former employees, or inspection officials who had or gave information of what might have been illegally going on.

With that in mind, I would support the amendment of Mr. Harkin, although Mr. Foley jolted me a little bit in pointing out that maybe we should hold this and have the staff do a little more work on it to resolve some of these points that rightly should be brought out.

The CHAIRMAN. I think that is a good suggestion.

The Department of Agriculture, as far as I know, is covered by special statutes that do not apply to other departments of the Government. It is a specific Federal crime for any member of the Department of Agriculture to profit from information received from a confidential, non-public source within the Department. There are, for example, crop reporting services within the Department of Agriculture which have certain privileged information.

Under current statutes any Department employee, who utilizes that information for his own profit commits a crime.

The question of how far we can relax these statutes in order to give public access to information is a question that we might want to consider rather carefully.

In the meantime, perhaps counsel could obtain information as to the kinds of information now covered under section 17(g), to broaden our knowledge.

Mr. THONE. Mr. Chairman, as I read section (g) in the committee print, it is just too broad.

Mr. KREBS. Mr. Chairman, I wonder whether the following language could get us out of this dilemma.

I wonder if it would be all right if the following were added at the end of section (g): "Nothing contained therein shall be construed as prohibiting such employee from divulging information which he reasonably believes involves conduct, on the part of any other individual or entity, prohibited under other sections of this act."

The CHAIRMAN. Since it now appears that Mr. Harkin will ask that consideration of his amendment be postponed until our next meeting, would the gentleman from California object to using this added time to discuss his proposed language with the staff?

We need to know what type of information the inspection service has considered as being covered by section 17(g) of the present act. Once this is known, we can decide whether continued protection of that information is warranted at all, and if so, to what extent.

I do think it would be useful to know the exact character of the information we are discussing.

Perhaps Mr. Harkin would not object to such a postponement.

Mr. HARKIN. I would not object to that. I would agree to postpone it.

The CHAIRMAN. Without objection, the consideration of Mr. Harkin's amendment will be postponed until our next meeting; and Mr. Krebs's language will be provided to the staff for research.

Mr. Moore?

Mr. MOORE. I would like to make a comment concerning my comments made at our last meeting on last Thursday.

I would like to make three points. I went to the district this past weekend and looked into the situation of our port down there. I am very embarrassed to report, and certainly I have respect for this committee and I do not want to mislead these members, so for that reason I want to correct a comment I made. Although it is true that there have been no problems with that port, as far as official records are concerned, and there have been no indictments, no grand jury hearings or anything else, I learned from a reputable source over the weekend that the FBI is, in fact, investigating that port.

I do not know what is going to come of it, but I certainly want to let everybody know that I did not intend to mislead any of you. I just learned of it over the weekend, and I am chagrined and shaken over it.

This port I thought so much of may be no better than some of the rest, I fear. So, we shall see what comes of that investigation.

The second point is that I learned yesterday from the State Grain Inspection Department of Louisiana that they do no inspection in export ports, only interior grain elevators. They would like to do the inspection at the export ports, of which we have about four or five in Louisiana. They feel like they are capable of doing it, and they have so reported to the General Accounting Office, and the GAO is checking in Louisiana to see what can be done to correct the existing situation.

The third point is that I learned yesterday afternoon from soybean farmers in Louisiana, who have experienced the same difficulties as farmers in the Midwest, that they have also lost money as a result of grain operations in Louisiana at the export points. Oddly enough, they prefer Federal inspectors at the export ports.

I simply wanted to make those points clear. I have been educated somewhat more than I was last Thursday, and I certainly did not want to mislead the committee. I wanted to reveal to them what I have learned in the last 3 or 4 days.

I do not know how to translate that into action on the committee, but I simply do not want to mislead anybody, and to make those points known.

Mr. HARKIN. If the gentleman would yield, I would ask the gentleman this. Inasmuch as your arguments the other day were so persuasive, and I admit that they were persuasive, and in light of these new facts, which happens to all of us every day, would the gentleman from Louisiana be at all interested in moving for reconsideration of the vote that was taken last week?

Mr. MOORE. The gentleman has put me on the horns of a dilemma. On the one hand I have no evidence that there is any wrongdoing at that port, but there is an ongoing investigation. Second, I must say that the Louisiana Grain Inspection Department does want to do the inspection but the farmers do not care for them to, and these are the facts as they are now. So in answer to the gentleman's question, no, I will not make the motion if it is proper.

Mr. HARKIN. I know how the gentleman feels.

Mr. BERGLAND. Under the rules of the committee, as I recall, a motion to reconsider must occur on the next regular meeting of the

committee. The committee attempted to meet yesterday, but failed to get a quorum. Does that constitute a regular meeting?

The CHAIRMAN. No; there was no meeting of the committee yesterday inasmuch as there was no quorum.

Reconsideration of the Bergland amendment would have to take place today, since it is the next regular meeting on that particular subject.

The motion would have to be offered by a member who voted on the prevailing side.

In this case, that would be the nay side inasmuch as the amendment was equally divided and, therefore, did not carry.

Mr. BERGLAND. Thank you.

Mr. HARKIN. A parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HARKIN. When we mark up the clean bill, will a motion be in order at that time to reconsider?

The CHAIRMAN. A motion would be in order not to reconsider, but merely to offer such an amendment; and the amendment would be in order at that time.

Mr. HARKIN. At that time?

The CHAIRMAN. Yes.

There are a number of ways in which that issue could be brought again before the committee. One would be to substitute an entire bill for the committee print and to consider an entirely new amendment.

Mr. Moos. Mr. Galliard would now be willing to respond to Mr. Bergland's question as to the hours that the supervisors work.

The CHAIRMAN. Before Mr. Galliard responds, I recognize the gentleman from Nebraska, Mr. Thone.

Mr. THONE. Mr. Bergland, you and I visited about this matter before the meeting. We agreed that we would defer on this until we could do a little more examination ourselves. The statement that Mr. Moore has just made now prompts me to move in that I did vote on the prevailing side, to reconsider the Bergland amendment and I hope you have a copy of it with you.

Mr. BERGLAND. The amendment I offered last Thursday is found on page 3, and it strikes everything from line 17 through the period after the word "section" on line 23. The net effect of that amendment which lost on the tie vote of 17 to 17, would be to require Federal inspection at the export points and set aside the authority vested by this language to authorize the States to be the Federal licensees.

Mr. SEBELIUS. I would like to go further because, by reasons of duties elsewhere I have not been able to give this the attention I wanted to.

At export port locations, that is, at those points the grain inspection would be done by Federal employees? You could not farm it out to a State?

Mr. BERGLAND. That is correct.

Mr. SEBELIUS. It solely applies to export?

Mr. BERGLAND. That is correct.

The CHAIRMAN. Will the gentleman from Nebraska yield?

Mr. THONE. Certainly.

The CHAIRMAN. The Chair would like to state what he understood the Bergland amendment to accomplish by striking this language.

The Chair understands that the gentleman from Minnesota intended to prohibit the Secretary from contracting the entire Inspection Service to a State agency. It is not necessarily implied in the amendment, as I understand it, however, that the Secretary could not engage in limited, ad hoc contracts with their private companies or State agencies to perform part of the Federal inspection.

So, it is not necessarily true that he would have to carry out the inspection entirely with authorized Department of Agriculture personnel. The inspection would have to be, however, Federal in character and the entire inspection service could not be contracted to a State.

Mr. BERGLAND. That is precisely the effect of the amendment.

I am informed by the Department that on rare occasions they will contract with someone to render a rather minor service in some of these remote ports. That could be sampling for reinspection and things such as this. It is used only on occasions. It is not a regular practice. This amendment would preserve that authority so they would not necessarily have to dispatch a Federal employee to someplace for a relatively minor duty. They could contract that function out.

I am informed by Mr. Galliard that it does not happen often, but it would be good to keep it open with the authority under the Secretary.

The CHAIRMAN. The gentleman from Nebraska has the time. Will the gentleman yield to Mrs. Heckler?

Mr. THONE. Yes.

Mrs. HECKLER. I am puzzled about the parliamentary situation. Are we considering the Bergland amendment?

The CHAIRMAN. There is no motion to reconsider. Although the gentleman from Nebraska has suggested that it might be offered, it has not been formally offered.

Mr. THONE. I intended to formally move reconsideration.

The CHAIRMAN. The gentleman moves that the committee reconsider the actions taken last week when the committee failed to adopt the Bergland amendment by a vote of 17 to 17. The gentleman voted on the prevailing side.

Does the gentleman state that he voted in the negative?

Mr. THONE. I did, yes.

The CHAIRMAN. The motion is not debatable.

Accordingly, the vote now occurs on the motion of the gentleman from Nebraska that the notion be reconsidered.

The Chair will state that the effect of this motion is to reconsider the Bergland amendment. A vote of aye is purely a vote to reconsider. If the ayes prevail, then the Bergland amendment will again be in order for consideration by the committee.

This vote is limited to the issue of reconsideration.

Mr. THONE. Mr. Chairman, I do not necessarily want a rollcall. A show of hands will be sufficient.

The CHAIRMAN. All those in favor of the motion from the gentleman from Nebraska to reconsider the Bergland amendment, will raise their right hands.

The CLERK. Twenty-one.

The CHAIRMAN. Those opposed?

The CLERK. Four.

The CHAIRMAN. The vote being 21 to 4, the motion is carried. The committee will now reconsider the Bergland amendment.

I think the appropriate procedure would be to recognize the gentleman from Minnesota.

Mrs. HECKLER. A parliamentary inquiry.

The CHAIRMAN. The lady will state it.

Mrs. HECKLER. I wonder if it would be possible for the gentleman to read the amendment.

The CHAIRMAN. I will recognize the gentleman from Minnesota for 5 minutes in support of his amendment, and the Chair suggests that the gentleman begin by again stating what the amendment is.

Mr. BERGLAND. This amendment appears on page 3 of the committee print.

It would strike everything on lines 17 through the word section on line 23.

The committee print authorizes the Secretary of Agriculture to contract to States to perform the Federal inspections. My amendment would place all export points under Federal control with Federal employees. The reason I so move is that I fear that if a State were permitted to contract to render a service, malfeasance and wrongdoing could go on for some time without the Department of Agriculture knowing of this wrongdoing. By having this Federal employee directly involved, the Secretary has complete and firm control over the performance of the inspection service provided.

I just think it is a safeguard we ought to take. While there are a number of export points that are under State inspection in which there has been no suggestion of any wrongdoing and those are in the States of Oregon, Minnesota and elsewhere, the fact is that there is no way, in my judgment, that we can approve some ports and exempt others.

I think all export points should have Federal inspectors, and that that Federal inspection should grant a Federal seal of approval on that grade.

It carries more credibility. For those and other reasons, I would hope that the amendment could be adopted.

Mrs. HECKLER. Will the gentleman yield?

Mr. BERGLAND. Yes.

Mrs. HECKLER. Does the gentleman suggest that we expand the inspection force and hire new personnel in order to accomplish this? If so, how many would be required and what budget effect would it have?

Mr. BERGLAND. The committee print provides for the setting aside of certain Civil Service requirements for those employees working for State and private agencies who can pass the qualification test put out by the Department of Agriculture, and they can be transferred to the Federal payroll.

So, there would not be any problem in that regard.

State employees could become Federal employees.

I do not know if there is any marked difference in the compensation paid or not. I suspect they are roughly the same.

The fees for the cost of this inspection are borne by the users of the services. In that regard there would probably be no change one way or the other.

The persons now providing the services do it at fees levied on the shippers of grain, and are used to pay their salaries. In this case, if the amendment is adopted, the fee would be levied by the Department

of Agriculture and would go into the general revenue fund from which the salaries of the employees would be drawn.

Mrs. HECKLER. If you intend to draw upon the existing personnel who are State inspectors, and train them to observe the Federal standards, then how can you, with the same personnel, avoid the same type of practices of fraud that have been found?

Mr. BERGLAND. The inspecting of grain is not a precise science. There are mechanical tests that apply on weights and moisture testing and the screening of grain for dockage and the like. Those are things that are fairly precise, but there are some judgments that go into color, and odor, and the like.

Whether the grain is moved to a port and inspected by a State employee or a Federal employee, the tests are approximately the same.

A well-qualified State employee should have no difficulty in becoming a Federal inspector.

The requirements are not unlike. The employee would have to be subjected to a test of competency so the Secretary is sure that that person will make a qualified inspection.

Mrs. HECKLER. Would the criminal penalties of the bill provide a deterrent to corrupt practices, and an incentive to maintenance of the standards set by the Department of Agriculture, and thereby make the provision unnecessary?

Would not the criminal penalties provide a deterrent to the kinds of corrupt practices which make this amendment necessary?

Mr. BERGLAND. The criminal penalties would apply in either case. Whether the employee is working for a private firm or for a State agency, or for the Department of Agriculture, the criminal sanctions are the same.

The difference here is, and the reason for this amendment is, that the committee print authorizes the Secretary to license a State agency. So his control in that instance is indirect. He can suspend the State agency after a hearing, and after some actions are triggered. It is true that he can move in, but I would feel more comfortable if those employees were under the direct control of the Secretary and not contracted through a State agency, where, if wrongdoing is discovered, the process then would have to come back to the Secretary through a suspension procedure, which is provided.

I would rather have those employees working directly for the Secretary so he can transfer from one point to another. This would avoid the sweetheart arrangements.

The CHAIRMAN. The time of the gentleman from Minnesota has expired. Mr. Fithian.

Mr. FITHIAN. Thank you, Mr. Chairman.

I would like to say, in support of the Bergland amendment, that a vote to make export inspectors Federal inspectors in no way impugns the quality nor the work of any State, nor any State Inspection Agency.

It simply means that for efficiency and for speed, which is absolutely crucial in this matter, instead of reinspection by Federal personnel, the initial inspection for grains leaving this country is made by Federal employees of the USDA.

I think the final and most persuasive argument I can find is the same argument that was used in the meat inspection discussions in

this committee not many years ago. If it is going to bear a USDA stamp, then it ill behooves this committee to impose the burden upon a given State to measure and weigh and inspect, and whatever else we are going to ask them to do, because it is not a State of Washington seal that goes on there. It is not a State of Louisiana seal. It is not a State of Indiana seal. It is a USDA seal that goes on the inspection certificate.

In the quest that we are making now to restore the confidence in our grain which we export, I think that is what is essential. If we are going to put a seal on it, as the distinguished Vice Chairman said in earlier discussions, then it ought to mean something or we ought not to put it on.

I am in favor of putting it on, and I am in favor of it meaning something. That is why I am a strong supporter of the Bergland amendment.

Mr. MADIGAN. While we have Mr. Galliard here, I wonder if I might ask a question?

The CHAIRMAN. Yes.

Mr. MADIGAN. Mr. Galliard, do you agree that if all the inspectors were Federal, that this would not cost the Federal Government anything at all?

Mr. GALLIART. It will cost the Federal Government money. We have much of that data which was submitted to the committee showing the differences in cost. We have data that shows that if we provide Federal inspection at export ports, the cost would be more. The cost would be more because the Federal inspectors are generally paid more than the State or private inspectors.

In addition to that, there is Federal overhead involved.

We have shown to the committee a number of options and the costs. The data is precise and available.

Mr. MADIGAN. I have it before me, but I am afraid I cannot understand it.

I wonder if you can tell me how much more the Department estimates in dollars that all Federal inspection is going to cost, and why those costs would be incurred.

The CHAIRMAN. Is the gentleman speaking of Federal inspection at export points?

Mr. MADIGAN. Yes.

Mr. GALLIART. One of my staff members who put together this material is here. I would like to ask him to respond.

Mr. LAUBIS. The issue you are raising is this. Given the cost items now listed in the committee print plus a system of Federal inspection at export points, what will it cost? We have costed the committee print out for a Federal/State system at export points. We have not costed out the committee print to include Federal inspection at export locations.

The information the committee now has does not include the provision for registration and other provisions.

The CHAIRMAN. Will the gentleman yield?

Correct me if I am wrong, but I think what the gentleman is seeking to discover is what additional cost would be concurred for complete Federal inspection at export ports over the amount required for

the committee print proposal authorizing the Secretary to contract through cooperative agreements with State agencies.

Is the Department in a position to give the comparative costs on those two options?

Mr. LAUBIS. We have not, specifically, costed out the bill under these conditions.

Mr. BERGLAND. Would the Department be able to give us an estimate? Are we talking about a substantial amount of money or is it relatively small? My judgment is that we are not talking about very much.

Mr. LAUBIS. I do not have the worksheets with me for the individual components. When we are talking about registration and other elements——

Mr. THONE. If you handle it by Federal inspectors at the export level or by State co-op agreement, what is the difference in cost then? It would not be much, would it?

Mr. LAUBIS. When we costed this out a week ago, we costed this particular bill out using the Federal and State system assumption at export points. We did not cost it out for Federal only.

It will obviously be more, where we impose Federal inspection at export ports over the State inspection alternative.

There are some reasons for that.

Mr. WEAVER. Why?

Mr. LAUBIS. The average Federal cost per man is greater than for State personnel costs. Secondly, there is the Department's overhead which would add to the cost.

In the worksheets, which unfortunately I do not have with me today, we looked at particular States which would likely be involved with export inspections, and then calculated the remaining parts as Federal. What we will have to do is go back and recalculate what the Federal cost would be in all Federal export system.

The CHAIRMAN. Will the gentleman yield?

Mr. MADIGAN. Yes.

The CHAIRMAN. In order to answer, we would have to know what the Secretary would do in entering into cooperative agreements and with what States. Under the provisions of the committee print the Secretary might decide not to enter into any cooperative agreements, since this is not required to by the committee print. On the other hand, we might decide to enter into agreements at all export points; and, thus, you would have all the States involved at export ports.

The Secretary could even contract for partial inspection under the committee print at some ports within the State and not at others.

So, it is all rather speculative. You have to give the Department several different alternatives on which to base its calculations. Is that correct?

Mr. LAUBIS. Yes; that is correct. When you are putting a proposal together, we have to make a lot of assumptions.

The CHAIRMAN. You do not know what the States would want to provide under a cooperative agreement, to what degree they would insist on the Federal Government carrying the cost, and so on.

Mr. MADIGAN. Do I still have time?

The CHAIRMAN. I recognize the gentleman for 2 additional minutes.

Mr. MADIGAN. Obviously, the Department made some estimates, or

some assessments, last week when they put together a comparison. They made some assumptions about what the Secretary could do.

I do not understand whether, if we talk about an all Federal system, whether we are talking about \$10,000 a year more or \$10 million a year more. I do not have any idea what ball park we are in. I cannot make an estimate.

The CHAIRMAN. If the gentleman will yield?

Mr. MADIGAN. Yes.

The CHAIRMAN. What is the total additional cost of the committee print as compared to that of the present system? Can you answer that?

Mr. LAUBIS. Yes; we have that information.

The present system, where we are talking about Federal costs, is \$5.7 million.

If you use the committee print, and you put into that a Federal/State system at exports, you include in that registration, and a number of other provisions which are in the bill, you would have a figure that reflects a total cost for grain inspection only. We are not talking about weighing, we are talking about grain inspection and registration cost.

We would increase Federal costs, based upon our assumptions and estimates, about \$20 million over the present system.

If you do not include weighing——

The CHAIRMAN. Weighing is really not involved in this particular question.

Do you want to hear the figure on weighing?

Mr. BERGLAND. No.

Mr. BOR. May I interject a point?

Apparently these figures which have been read, reflect the expenses to the Federal Government that are attendant to the registration section of the bill.

The registration section of the bill provides for the collection of fees from people who are registered in amounts that are to be determined, based on the expense to the Federal Government of the administration of that section.

So, as in the other part of the bill, it provides for collecting the expense from users.

The CHAIRMAN. What the figures indicate, as I understand it, is the estimated additional costs to be incurred under the committee print, without making deductions for increased fees.

Is that correct?

Mr. MOOS. That is correct.

The CHAIRMAN. So, according to your estimate, there would be a gross increase of \$20 million called for in the committee print over the cost of the present grain inspection system, before any deductions are made for cost-sharing from collected fees.

Is that correct?

Mr. LAUBIS. That is correct.

The CHAIRMAN. Mr. Poage makes the point that somebody has to pay anyway. The committee must still make a judgment as to whether the money should be appropriated or collected through user fees.

Mr. MADIGAN. That was my question.

Who is going to pay the fees? Is it going to be added to the cost of the product, or how?

The CHAIRMAN. That is a matter for the committee to decide.

There are several options. The cost could all be charged to the Federal Government through appropriated funds. It could be collected from users through the inspection and registration fees. The cost could even be divided in any way the committee wishes.

The committee print proposes that the costs be shared. In other words, all the inspection costs would be borne by fees; and the administrative costs would be divided 50-50 between user fees and appropriate funds.

Mr. THONE. Does not the exporter currently pay the entire fee?

The CHAIRMAN. Yes; the exporter presently pays the entire fee of the private inspection. There is also a \$5 million administrative cost for the supervision, field inspection, and other costs of the grain division, which is partially paid from appropriated funds; is that correct?

Mr. GALLIART. That is correct.

The appropriated money for supervision purposes is \$3.1 million. That is the money that is appropriated for supervision purposes. Not included is the fee that the grain firm would pay for appeals.

The CHAIRMAN. Does that include costs for appeal inspection?

Mr. GALLIART. The \$3.1 million?

The CHAIRMAN. Yes.

Mr. GALLIART. The appeals are self-funding.

We charge a fee for the appeal.

The CHAIRMAN. I understood you to say at previous times that if the appeal leads to a reversal of the inspection, then there is no charge.

Mr. GALLIART. That is correct. It does not occur that often. I would say over 80 percent of the time we agree with the inspectors' findings.

The CHAIRMAN. For that portion of inspections where you reverse the decision, you bear the expenses, do you not, Mr. Galliart?

Mr. GALLIART. Yes.

Our fees are high enough to take that into consideration.

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. POAGE. I just want to call attention to this.

This does involve some additional expense. Whatever the amount is, it is the same sort of thing that New York is doing. They spend it in small amounts. The United States is not going broke by the expenditure of \$100 billion at one time, it is going to be in small amounts. This adds somewhere in the region of \$20 million to the costs, nobody knows exactly how much, but it is somewhere in there added to the cost.

The costs are ultimately paid by the producers.

But it does add to the cost.

Now, if we get benefits from it and if, in fact, it is necessary to give stability to the system, then I recognize that the cost must be paid.

But if it is simply a matter of paying for the same thing and paying a higher price to get the same thing; that is, that we get the same thing at a higher price that you can get at a cheaper price, I do not know why we should do it.

We have several systems of providing services of the Federal Government.

In the building of dams, the Government itself builds a great many dams by the engineers, particularly where you are close to an establishment and they actually do it themselves.

On the other hand, and probably in most instances, they contract. It is cheaper to contract than it is for the Government to do it itself.

That does not mean that you get a lower standard of construction. The contractors meet the Federal specifications.

Our roads are practically all built by contract. They meet the Federal specifications. We do it because we think it is a little cheaper than to have the Federal Government do it by itself.

It seems to me that that is all that is involved here.

You will be paying a Federal inspector something more than it costs you to have it done by the State services. Certainly we want the States to do as good job as the Federal Government. There is no reason that they cannot do as good a job. They can meet the standards, and the Federal Government does supervise it.

I do not think you have to have the Federal Government and you do not have to send the President down to do the inspection. You do not even have to send Members of Congress to do the inspection.

You can employ someone to do it. And you can get it done through an approved State system just as well as you can get it done through a Federal system.

The Federal Government can put its stamp of approval on it and does do it. We do it in the question of inspection of meats for the people to eat. I do not know why, when we can rely upon the State inspection system to determine whether something is going to kill us or not, we cannot rely upon the State inspection systems to determine whether we have properly graded a commodity.

We have the same penalties for any kind of abuse.

Mr. MELCHER. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. MELCHER. I thank the gentleman for yielding.

We are very solicitous about foreign shipments. On the export of cattle we insist that the Federal veterinarian sign off on those inspections.

Mr. POAGE. What I said was, the inspection of meat to eat in the United States, that is not shipped to a foreigner, but for you and I to eat: a good deal of inspection is carried on by State systems. This law specifically provides for the approval of State inspection to meet a Federal standard and to be supervised by the Federal Government, just as we would under the original bill here.

The Federal Government supervises it and it has to meet the Federal standards.

But why put an extra \$20 million, is the only question involved here.

Until someone can show that there is something wrong, and that somebody is going to suffer, then it does not seem to me that we ought to spend even \$500 or \$2,000 more, much less \$20 million.

The CHAIRMAN. The time of the gentleman has expired. I recognize Mr. Melcher.

Mr. MELCHER. I do not think the cost that is involved here is the issue at all.

The issue here is whether or not, in huge sales of grain from our country to other countries, who is going to do the inspection.

The farmer that raised that grain is the one that should be protected above all. They are the guys, and the ladies too, who have put

a lot of their time, effort, and their livelihood into the job of growing this grain that is going to be shipped abroad, and they have to be concerned about how we best protect their interests.

I am a Montana wheat grower. I raise my crop, most all of which is going to be exported from Portland or Seattle to a foreign country. I certainly have something at stake as to how it is inspected. I have the greatest amount of confidence, as a grain grower, if I knew that the Federal presence and the Federal responsibility was right there to the end to be sure that my wheat goes to our customers clean, under honest weight and grade.

The cost, I do not think, if of great significance because it is such a tiny fraction of the value of the export.

It is national policy to export grain. There is better precedent for having Federal inspection of grain, which is sold abroad, than there is for many other things that we have federalized.

When Mr. Poage used for example of meat, I do not think it was an appropriate example.

First of all, when we ship livestock abroad, we are very careful that they be finally signed off by a Federal veterinarian. We have established that precedent. It seems to have created greater confidence among the foreign countries that are going to receive the livestock. It seems to be a requirement that they want.

When you are talking about whether there is any real reason to do this, and without decrying what any particular State is doing, I think there is now a lack of confidence in what is going on in the inspection of our grain for foreign sales.

We have scandals still developing. They are not all laid out. There are going to be a lot more. I think we had better go Federal with all export inspection.

Without that in the bill, I do not think we have much of a bill. That is just a baseline. Unless we get it in the bill, then I do not know who would claim parentage with this particular bill. I am going to resist being labeled as a developer of this bill unless it goes in.

I am glad the gentleman from Nebraska asked to reconsider this, and I am glad the committee is reconsidering it. I think we should accept the Bergland amendment. I think it is absolutely essential if we are going to have any bill at all.

The CHAIRMAN. Mr. Sebelius.

MR. SEBELIUS. It has been brought to my attention that, in this amendment, that we take the language above it, and section 8 is where the Secretary is authorized to make contracts with private individuals, so all we have done with this amendment is just to cut out the Secretary contracting with the State, but we still have private option.

The CHAIRMAN. Will the gentleman yield?

We discussed this at some length at the last meeting.

The staff explained that the language authorizing the Secretary to contract with private individuals was not to be interpreted as authorizing that the entire inspection process be contracted out to a private inspection agency. It only allows the Secretary to contract certain portions of the inspection process, such as sampling, on an ad hoc basis.

MR. SEBELIUS. That ought to be spelled out.

The CHAIRMAN. I think the legislative history will clearly indicate that.

Mr. SEBELIUS. I want that assurance, because Mr. Thone and I discussed this before he made his motion to reconsider. On that basis I think I would probably support the Bergland amendment, I yield back the balance of my time.

The CHAIRMAN. I recognize Mr. Krebs.

Mr. KREBS. Mr. Chairman, in light of the extensive discussion, I will now move the previous question.

The CHAIRMAN. The gentleman from California moves the previous question.

All those in favor of the previous question, signify by saying aye.

Those opposed?

The previous question is ordered.

All those in favor of the Bergland amendment, raise your right hands.

Mr. KREBS. I ask for a recorded vote.

The CHAIRMAN. The gentleman from California asks for the ayes and nays.

All those gentlemen in support of the Bergland amendment, signify by saying aye, those opposed; no. The Clerk will call the roll.

[The rollcall follows:]

Ayes: Representatives Jones of Tennessee (by proxy), Melcher, Bergland, Brown (by proxy), Rose, Litton (by proxy), Richmond (by proxy), Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, English, Fithian, Jenrette (by proxy), D'Amours (by proxy), Sebelius, Thone, Moore, Vigorito (by proxy).

Nays: Representatives Poage, de la Garza, Breckinridge, Wampler, Madigan, Heckler, Jeffords, Grassley, Foley, Jones of North Carolina (by proxy).

Present: Representative Symms

The CLERK. Twenty-two ayes, ten nays, and one present.

The CHAIRMAN. There being 22 ayes, 10 nays, and 1 present, the amendment is agreed to.

I recognize Mr. Fithian.

Mr. FITHIAN. Mr. Chairman, if it is appropriate at this time, I would like to get into a discussion of the weights, which is a major section of the bill.

I would defer to your, or other committee members' judgment as to whether this is the appropriate time.

The CHAIRMAN. The Chair advises the gentleman that he has no objection to getting into the subject of weights if any member wishes to offer such an amendment. If the gentleman would not mind, perhaps we ought to defer consideration of the weight question since it is a complex issue.

Would the gentleman mind yielding to Mr. Harkin?

Mr. FITHIAN. I would be happy to yield.

Mr. HARKIN. I will bring up those other questions of weights at a later point.

I would like to ask counsel a question before offering an amendment.

Will the gentleman yield the time?

Mr. FITHIAN. I would be happy to yield.

Mr. HARKIN. Under H.R. 9467—

The CHAIRMAN. The Chair will recognize the gentleman from Iowa on his own time.

Continue.

Mr. HARKIN. Thank you, Mr. Chairman.

Under the first bill that was introduced, which as I understand it, was basically the administration bill, if I can call it, on the first page it had a paragraph saying:

It is hereby found that all grain and other articles in transactions of grain regulated under this Act in interstate or foreign commerce are substantially affected, etc. etc.

Do you see what I am talking about?

On the committee print that section is left out.

I would like to know why it was in the first one, and why it is not in the second one.

The CHAIRMAN. Will the gentleman yield to me?

Mr. HARKIN. Yes.

The CHAIRMAN. The purpose clause is the one to which the gentleman is referring. The Chair felt it more appropriate to consider the purpose clause after the general nature and construction of the bill had been decided, rather than to write a purpose clause first which might later have to be amended once the bill was formed.

Does the gentleman follow me on that matter?

Mr. HARKIN. Yes.

The CHAIRMAN. The purpose clause sets out what the legislation was designed to accomplish and describes to some extent the background of the committee's consideration. To write a purpose clause, you must have some idea of what the committee's final action or judgment will be.

Mr. HARKIN. I see. You are saying that after we have finished marking up the bill, we will return to consider that?

Mr. POAGE. Will the gentleman yield further?

Mr. HARKIN. Yes.

Mr. POAGE. I want to keep the record straight.

I have from time immemorial opposed these purpose clauses. They are nothing in the world but the Fourth of July speeches written into the statute.

They have no place in the code and should not be in there.

They neither add to, nor subtract from, the efficiency of the law.

There is no reason in the world to clutter up the statute with a lot of propaganda. That is all that it is. The purpose clauses are never anything except mere statements as to why you ought to vote for the bill.

If we cannot convince the membership of the House that they ought to vote for the bill with the reasons that we give them, then we are not going to achieve much by writing it into the statute and having to foul up the whole United States Code.

While I do not think there is anything suspicious about the purpose clause, it adds nothing to the legislation, and I see no reason for having it.

I am not in the spirit of challenging the Chair, but I am merely suggesting that no purpose clause be put in at all.

The CHAIRMAN. I assume that when we come to that point, there will be a lively discussion as to whether we shall include a purpose clause or not.

At that juncture the membership of the committee will know more about what the committee print proposes to do, and will, therefore, be in a better position to judge whether it wants a purpose clause.

Mr. GRASSLEY. Mr. Chairman, would any statement so broad as that have an impact on whether or not grains sold at the local country elevator are in fact involved in interstate commerce or not?

Mr. POAGE. Not a bit.

The CHAIRMAN. There is some dispute among lawyers on this point. The gentleman from Texas is an excellent lawyer who has vast experience both previously in his practice and here as a legislator.

In the Department and elsewhere, there are lawyers who argue that some findings are useful in the interpretation of the statute at a later time.

This, however, is disputed vigorously by the gentleman from Texas. I would have to confess that I think this entire debate had better be put aside for the time being until we decide whether to adopt the bill or not.

Mr. GRASSLEY. Rightly so, but if you recall from the question that we had during the hearings, I am concerned about what this legislation does to the local elevator. That is why I asked the question.

The CHAIRMAN. My own opinion is that if the committee decides to extend the reach of Federal regulations to grain held in individual elevators, the commerce clause will cover that decision.

Mr. GRASSLEY. But the purpose clause has nothing to do with that decision at this time?

The CHAIRMAN. No.

Mr. HARKIN. I have another amendment. Again, I will not offer it if there is some reason for not having it in.

Again I direct a question to counsel.

On the first page of the act itself, in the definitions, it is paragraph (g) which says, "The term grain means oats, barley, flaxseed, soybeans, mixed grains, and any other feed grains, and oil seeds."

Is there any reason at all that that term grain does not include rice?

The GAO report states that 80 percent of the time, of the Houston field office personnel was spent on rice.

I wonder why rice is not included in it?

Mr. GALLIART. We inspect rice. It is a historic thing. Most of the rice is inspected by Federal personnel. We inspect it under the Agricultural Marketing Act of 1946.

When the Grain Standards Act was first promulgated back in 1960, it included the grains you have mentioned, and not rice. Historically, we have not included rice under the U.S. Grain Standards Act.

Mr. HARKIN. Why?

Mr. GALLIART. I cannot give you an answer as to why. I suspect that we have considered rice for these many years as a processed product, because we generally inspect the milled rice. It is not a good reason, I admit.

We inspect rice under the Agricultural Marketing Act of 1946. Under this act we inspect most of our processed products: Dry beans, cornmeal, and so on. Generally, rice is considered a processed product.

Mr. BERGLAND. Will the gentleman yield on that point?

Mr. HARKIN. Did I understand Mr. Galliard to say that rice that is exported is federally inspected?

Mr. GALLIART. Practically all of it.

We have State inspection in California with a cooperative agreement for rice, but all the rice produced in the South is inspected by the Federal Government.

Mr. BERGLAND. Thank you for yielding.

Mr. HARKIN. Is rice considered a food grain?

The CHAIRMAN. Yes.

Mr. HARKIN. Then I would move, Mr. Chairman, to amend. I do not know exactly the way it is going to go, but I guess it could go under page 1. After page 1, line 7, of the committee print, after the word "changing" I would insert the words "subsection (g), defining the term 'grain'" and then to include the term "rice" under the definition of grain.

They could draft it up. I do not think I stated it very clearly.

As I understand it, I just want to make it explicit. It may be included in the words "food grains."

It has the term feed grains, and certainly corn is a feed grain, and so we have corn and feed grains, so we might as well have food grains and rice.

So, Mr. Chairman. I move the adoption of that amendment.

The CHAIRMAN. The gentleman moves to include the word "rice" on which line?

Mr. HARKIN. On the committee print, on line 7 on the first page after the word "changing" I would insert the words "subsection (g) defining the term 'grain'."

Section 3 of said act is amended by changing "subsection (g) defining the term 'grain,'" (i) defining the term "official inspection," subsection (j) et cetera, and on page 2 of the committee print, after line 2, to insert a new section (g). And it would read, "the term 'grain' means corn, wheat, rice, rye, oats, barley, flaxseed, grain sorghum, soybeans, mixed grain, and any other food grain, feed grain, and oilseeds for which standards are established under section 4 of this act."

That is exactly like the definition set forth in paragraph that is subsection (g) of section 3 of the original bill. The only exception is that rice is omitted there.

Mr. POAGE. We may be doing something here that is not normal.

I do not grow rice but the farmers of the State of Texas do. They grow substantial quantities of rice. I do not know how this would affect the rice grower or whatever. It may be perfectly good. I certainly do not want it to be said that I am opposed to this.

It has not been included. There must have been some reason for not including it back when it was excluded, and it seems to me that we ought to have some knowledge about the rice situation before we begin to legislate about rice.

I do not grow any flaxseed, and I am not going to try to come in here and tell you what to do about how to legislate on it.

I have not the slightest idea whether we should or not.

It seems to me that, until we have some understanding of the effect that this would have on the rice business, then we ought to leave it alone.

Mr. HARKIN. Again, I do not want to add something that is meaningless. It does have the term "food grains". Certainly, if rice is a food grain, then it must be covered.

Mr. POAGE. If it is covered, then we do not need to put it in.

Mr. HARKIN. Then why do we have to have corn put in there, because it says "feed grains"?

Mr. GRASSLEY. It obviously must not be included because you quoted from the GAO report that it was not included.

Mr. HARKIN. The GAO report says that 80 percent of the time the Houston field office personnel's time is spent on rice.

The CHAIRMAN. Will the gentleman yield to counsel for clarification?

Mr. HARKIN. Yes.

Mr. BOR. The issue that Mr. Harkin is raising is an issue as to whether inspection of rice should be conducted under the act pursuant to which it is currently being conducted or whether instead it should be conducted under the Grain Standards Act.

Rice is being inspected at the present time. There are standards for rice, but the inspection that takes place is pursuant to a different statute, that is, the Agricultural Marketing Act of 1946, rather than the Grain Inspection Act.

If you were to place it under the Grain Inspection Act then there would be some different consequences.

For example, as I understand it, under the Agricultural Marketing Act, not all rice exports are actually inspected, just those for which the exporter and the buyer wish to obtain official inspection.

Furthermore, if we do it under this statute, then it would mean that you could not have Federal inspection at interior points, which I understand from Mr. Galliard is the case when inspection occurs currently under the Agriculture Marketing Act.

So, there are consequences to be considered when you transfer from one act to the other.

It does not mean that at the present time there are no standards for rice and that there is no act which sets the basis upon which inspection of rice can be conducted.

The CHAIRMAN. Will the gentleman yield?

Mr. HARKIN. Yes.

The CHAIRMAN. Under the present arrangement, rice is not inspected under the U.S. Grains Standards Act but, rather, under the Agriculture Marketing Act. It is inspected by the Agriculture Marketing Service, not the U.S. Grain Inspection Service.

Mr. GALLIART. It is inspected by the Agriculture Marketing Service.

The CHAIRMAN. Furthermore, rice is not inspected unless the purchaser and the buyer request such inspection.

Mr. GALLIART. That is correct.

This includes Public Law 480 shipments.

The CHAIRMAN. Under the Grain Standards Act, by contrast, any grain sold by grade must be inspected at the export ports.

Mr. GALLIART. Yes.

The CHAIRMAN. So, if you put rice under the Grain Standards Act, any rice sold by grade would have to be inspected. You would have the problem at the interior points.

We are running pretty close to the end of the hour.

The Chair notes that there is not a quorum present.

Mr. DE LA GARZA. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. DE LA GARZA. On the conflict of interest section, where in the draft bill is it handled?

Mr. BERGLAND. Page 10, line 7.

Mr. DE LA GARZA. Some of the legislation had percentages. Here you have only that they shall not have such a conflict of interest, either directly or indirectly; how would that be defined?

Mr. BOR. This largely leaves it up to the Secretary of Agriculture to implement. It sets a general rule that the conflict of interest should not be such as to jeopardize the integrity of the inspection system.

He would handle this on a case by case basis to determine whether there was such a conflict of interest that you are not getting a truly impartial result.

So, it may well be that in a case where a chamber of commerce or a board of trade is responsible for inspection, that you would have buyers and sellers both represented in sufficient number on the chamber of commerce, or board of trade, looking out over the shoulders of one another so that you do get a truly impartial objective service performed.

In other cases, you may have an inspection service that is entirely controlled by either a buyer or seller and the Secretary might find in that case that, because of the conflict of interest, you could not truly get an objective type of result.

Mr. DE LA GARZA. Thank you very much.

I now suggest the absence of a quorum.

Mr. THONE. Mr. Chairman, before we leave, let me say this. Mr. Bergland and myself have been working on the conflict of interest section. It is difficult, and we would like to bring this up at a subsequent meeting.

The CHAIRMAN. The Chair observes that it is almost 10 minutes of the hour and that we have fallen somewhat below a quorum. The committee is, therefore, adjourned to meet at 10 o'clock on Thursday.

There will be no meeting tomorrow.

[Whereupon, at 11:50 a.m., the committee adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, DECEMBER 2, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Mathis, Bergland, Bowen, Litton, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Bedell, McHugh, Fithian, Jenrette, D'Amours, Wampler, Sebelius, Thone, Symms, Heckler, Jeffords, Kelly, Grassley, and Moore.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Gene Moos, staff analyst; Steve Allen, staff consultant; L. T. Easley, press assistant; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order.

The gentleman from Kansas makes a point of order that a quorum is not present.

The clerk will call the roll.

[The rollcall follows: Present: Representatives Poage, de la Garza, Jones of Tennessee, Melcher, Mathis, Bergland, Breckinridge, Nolan, Weaver, Baldus, Krebs, Harkin, Bedell, Fithian, D'Amours, Sebelius, Thone, Jeffords, Grassley, Moore, Foley, Richmond, McHugh, and Wampler.]

The CHAIRMAN. The clerk will report.

The CLERK. Twenty-four members answered when their names were called.

The CHAIRMAN. A quorum, then, is present; and the committee will come to order.

We meet for consideration of the committee print amending the U.S. Grain Standards Act to improve grain inspection and the operations of official inspection agencies.

At our last meeting the committee print was under consideration and was open to amendment at any point.

I recognize Mr. Harkin.

Mr. HARKIN. Mr. Chairman, I had two amendments which I offered at the last meeting, both of which were kind of held over until today.

One amendment that I had offered at that time dealt with inserting the term "rice" in the bill that is in the definition section to include rice as a food grain.

However, after consulting with a number of members who were more knowledgeable than I on this subject, I learned that rice in fact goes to the millers prior to its being shipped out. It is shipped out in a finished form not in a rough form that other food grains or feed grains are, and in fact, rice is being inspected by Federal inspectors now on a voluntary basis. That is prior to going to the millers.

So, we really don't have the problem with rice that we have with the other grains.

So I would ask unanimous consent that I withdraw my amendment.

The CHAIRMAN. Without objection the amendment will be withdrawn.

Does the gentleman have another amendment?

Mr. HARKIN. Yes, Mr. Chairman.

I had offered this last time. This was basically to strike section 20.

The CHAIRMAN. It appears at the bottom of page 26.

Mr. HARKIN. Strike section 20 which appears at the bottom of page 26.

I had argued at that time in introducing the amendment that the provisions of section 20 as it is in the committee print is nothing more than a gag rule. I would reiterate my statement made at that time that much of the information that we have now concerning the grain scandal came about because certain people were willing to make these facts known outside of official channels.

Due to some diligent reporting by some reporters, the information was made public. I think this culminated in the hearings we are having right now.

Upon further looking at this, I find that section 17(g) of the Grain Standards Act has this to say. Let me see if I can find it. That is on page 9 of the Grain Standards Act, Public Law 90-487.

It has basically the same wording as in the committee print. It says that:

Any officer or employee of the Department of Agriculture who shall make public any information obtained under this act by the Department of Agriculture without its authority unless directed by the court shall be guilty of a misdemeanor. Upon conviction it will be subject to the penalties, et cetera.

It was pointed out at that time by the members that the purpose was to protect trade secrets and private companies that were engaged in the trade.

If I could follow up on that I would point out that under the Code of Federal Regulations, which would be 7 CFR 0.735-2(a), it says that:

Any employee is prohibited from giving information acquired through his official position prior to its release to the general public to advance the interest of himself, his family, his associates or friends, or any other person or enterprise.

I further point out that the Freedom of Information Act, as amended in 1974, specifically exempted from disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential. That is in the Freedom of Information Act, Public Law 93-502.

So I think there are plenty of provisions in existing law to cover the protection of trade secrets and commercial or financial information which is obtained.

All we are talking about is quality, perhaps, certain things that are happening in the inspection system which would not fall under the category of trade secrets or financial or commercial trading information.

Mr. Chairman, I would ask unanimous consent again to amend my amendment as it was introduced last time which was to strike section 20.

I would like to amend that amendment to read: "To strike section 20 and insert in lieu thereof the following: Section 20(a). Strike section 17(g) of the U.S. Grain Standards Act."

Again, I feel that both 17(g), which is in existing law, and the one which is in the committee print are both unnecessary and can be used as a hammer or a sword held over the heads of Federal inspectors or inspectors that would be contracted with the Department of Agriculture to inspect the grain.

Mr. Chairman, I ask unanimous consent to revise my amendment to include that provision and to have it debated on that basis.

The CHAIRMAN. Will the gentleman state the revision again?

Mr. HARKIN. My first amendment said "To strike section 20." I would like to revise it to read thus: "Strike section 20 and insert in lieu thereof the following: 'section 20(a). Strike section 17(g) of the U.S. Grain Standards Act and (b) redesignate section 17(h) of the U.S. Grain Standards Act as section 17(g).'" In other words just move it up.

The CHAIRMAN. Is there objection?

Mr. KELLY. Mr. Chairman, reserving my right to object, I wonder if referring to the print you would describe that one more time.

Mr. HARKIN. Certainly.

On the bottom of page 26 is section 20.

My first amendment said to strike that section.

I would like to revise that amendment to say "Strike that section and insert in lieu thereof the following: 'section 20. Strike section 17(g) of the U.S. Grain Standards Act.'" If you have a copy of that it appears on page 9. Then paragraph (b) would be to redesignate section 17(h) of the U.S. Grain Standards Act to section 17(g).

The CHAIRMAN. Will the gentleman yield?

Mr. KELLY. Yes.

The CHAIRMAN. May I have counsel's attention?

I think it would be preferable for the gentleman's purpose to say that section 17(g) of the Grain Inspection Act is hereby repealed.

Mr. HARKIN. Would we then have to move up section 17(h) to make it section 17(g)?

Mr. BOR. You could. There is no real necessity but you could.

The CHAIRMAN. The gentleman asked unanimous consent to reform his amendment and strike section 20 of the bill and to substitute in lieu thereof the repeal of section 17(g).

Does the gentleman from Florida reserve the right to object?

Mr. KELLY. Yes; I do.

I would like to ask this question: Could not the same purpose be accomplished here by simply inserting "except information regarding criminal activity," or something like that?

It seems that without taking some kind of testimony and trying to find out why they need this, we may be improperly interfering in trade and commerce and not be fully informed of what we are doing.

What you are saying is that you don't want to muzzle someone so that if he learns of wrongdoing he cannot divulge it.

I think this does not achieve that objective.

This deals with information about the quantity or quality of the shipment as opposed to misdeeds.

Mr. HARKIN. I just pointed out that the Freedom of Information Act protects trade secrets and commercial dealings, and, also, the Code of Federal Regulations specifically prohibits any employee of the Federal Government or any employee that would be contracted with the Department of Agriculture to conduct such inspections from revealing those kinds of secrets.

So that is protected already by existing law.

Mr. MELCHER. Will the gentleman yield?

Mr. KELLY. Yes.

Mr. MELCHER. I think it would be helpful if you would just read section (g) once more because we don't have that in front of us.

Mr. HARKIN. Section 17(g) of the present Grain Standards Act says:

Any officer or employee of the Department of Agriculture who shall make public any information obtained under this act by the Department of Agriculture without its authority unless directed by the court shall be guilty of a misdemeanor. Upon conviction thereof he will be subject to the penalties set forth in section 14 of this act.

Mr. MELCHER. Thank you.

The CHAIRMAN. Mr. Krebs.

Mr. KREBS. Mr. Chairman, at this time in light of Mr. Harkin's amendment—

The CHAIRMAN. Does the gentleman reserve the right to object?

Mr. KREBS. I do.

If it is in order, I would like to offer my substitute—which I tried to offer last time. I believe it is in line with the thinking just expressed by the gentleman from Florida.

The CHAIRMAN. The gentleman's substitute would be in order, but the first question is whether the unanimous-consent requested by the gentleman to reform his amendment would be approved.

Is there any objection to the reformation of the gentleman from Iowa's amendment?

Hearing none the amendment is reformed.

The gentleman from California is recognized.

Mr. KREBS. Mr. Chairman, in lieu of striking the portion suggested by the gentleman from Iowa, I would like to offer the following language which should be added after this paragraph.

It would read as follows:

Nothing contained herein shall be construed as prohibiting such employee from divulging information which he reasonably believes involves conduct, on the part of another individual or entity, prohibited under this act.

It would seem to me that this would accomplish the concern that Mr. Harkin expressed or is trying to express with his amendment. It would in effect make it absolutely clear that we are not trying to gag anybody or prevent anybody from divulging information which exposes criminal conduct of one kind or another.

At the same time it would not, I think, leave the section open to the type of criticism that has been expressed at the last meeting and at today's meeting.

Mr. MATHIS. Will the gentleman yield?

Mr. KREBS. Yes.

Mr. MATHIS. I wonder if the gentleman would attach an amendment to his substitute and insert the word "criminal" before the word "conduct."

Mr. KREBS. I will be glad to do that.

Mr. MATHIS. I would ask unanimous consent that the gentleman's amendment be so amended.

The CHAIRMAN. The gentleman from California asked unanimous consent that his amendment be reformed to put the word "criminal" before the word "conduct." Without objection so ordered.

Are there further amendments to the amendment or to the substitute? Is there further discussion?

Mr. HARKIN. A parliamentary inquiry.

The CHAIRMAN. State it.

Mr. HARKIN. How did the gentleman from California's amendment apply?

The CHAIRMAN. The gentleman from California offered a substitute for the gentleman from Iowa's amendment retaining the language of that section.

Mr. JEFFORDS. The only part of the present language that bothers me at all is this: "Otherwise in connection with the law enforcement proceedings of the Federal Government."

That seems to be too narrow. One, limiting it to the Federal Government and, second, law enforcement proceedings would indicate something that is already in progress. This is versus a mere reporting to a law enforcement official under the act.

I don't have the particular language but it seems to me that that phrase could be corrected to allow reporting of wrong conduct under the act to a law enforcement official and that that would overrule the objections expressed by Mr. Harkin and brought out by Mr. Krebs.

I think that would be an easy way of doing it. I would rather have staff draft the appropriate language.

It would seem to me a much simpler way of doing it.

Mr. BEDELL. Does Mr. Krebs' amendment amend the act and remove from line 24 on page 26 through line 15 on page 27 or does Mr. Krebs' amendment simply amend what we have in the act as proposed now?

The CHAIRMAN. As I understand the gentleman's amendment, it adds language to the body of the text that already exists in the committee print and says that nothing here shall be construed as preventing any employee from disclosing information which he reasonably believes to be connected with criminal conduct.

Mr. BEDELL. But it does leave the act as it is now?

The CHAIRMAN. Yes.

Is that correct, Mr. Krebs?

Mr. KREBS. That is correct.

I do not want to strike anything. I am merely adding the language that I outlined previously, at the end of the paragraph that Mr. Harkin proposed to have stricken.

The CHAIRMAN. Mr. Fithian.

Mr. FITHIAN. We have some fine prosecutors on our panel here. So I will not enter into the niceties of which of these two amendments ought to be adopted.

But I would point out to the committee that we have already substantially increased the role of the USDA in grain inspection and we will probably increase it more.

Therefore, I think something of the nature of one or the other of these amendments ought to be seriously considered and accepted by this committee because in the future the ability of the U.S. Department of Agriculture to cover up or to conceal within itself wrongdoings will increase with the increase in their ability.

So I would argue the case that one or the other of these amendments ought to prevail.

The CHAIRMAN. Is there further discussion?

Mr. Baldus.

Mr. BALDUS. I have a question of counsel perhaps. These are really two questions.

One is: Mr. Harkin referred to another section of the Grain Standards Act and if we change it in the way Mr. Krebs would change it, do we end up with a conflict?

Furthermore, about inserting the word "criminal," would that limit it so the person would not have protection if he divulged information that did not reach the criminal level, that is to say a misdemeanor nature?

Then he would lose immunity in the wording. That is immunity from prosecution for divulging information. That is if it were not criminal.

Mr. BOR. In answer to your last question, a misdemeanor is a criminal-type activity.

The acts which are set out in the Grain Standards Act as prohibited acts are all subject to criminal penalties.

The committee print, however, has the provision which allows the Secretary to provide that in lieu of criminal penalties he could assess a civil penalty or he might withdraw grain inspection.

So if you leave the term "criminal" in this amendment, and if the Secretary decided that he did not want to pursue criminal sanctions by referring the case to the Department of Justice but only wished to undertake civil sanctions through civil penalties or through the route of refusing inspections to a grain firm, then a question might arise as to whether this section would allow the divulging of information.

Mr. BALDUS. Without inserting the word "criminal" it would have a broader context.

Mr. BOR. It would have a slightly broader context, assuming that the committee print is adopted as the bill. In other words that would assume that you adopted the provision in the committee print that gives the Secretary that kind of discretion.

If you do not adopt that provision, then of course any prohibited act automatically is subject to the criminal penalty.

Mr. BALDUS. And this section of the act, if it were to become law, would supersede that other section? That is, it would have the same wording as Mr. Harkin's amendment?

Mr. BOR. Mr. Krebs' amendment in the nature of a substitute would be in lieu of the proposal of Mr. Harkin. As I understand it, it would leave intact section 20 as it now stands in the committee print but add to it the sentence that allows for the divulging of information which a person reasonably believes involves conduct prohibited under this act.

Mr. BALDUS. I may have misunderstood Mr. Harkin, but it seems to me he was referring to still another section of the Grain Standards Act and that would be replaced.

Mr. BOR. The section 20 as it stands in the committee print amends a provision in the Grain Standards Act.

Mr. BALDUS. Section 17.

Mr. BOR. Yes, section 17.

Mr. Harkin's proposal would be to repeal the section 17 of the Grain Standards Act and also to eliminate section 20 as it stands in the committee print.

Mr. BALDUS. Let me go one step further.

Pardon me. I do understand now.

The CHAIRMAN. Mr. Jeffords.

Mr. JEFFORDS. I would like to move to amend the substitute by striking out the language therein and moving to strike on page 27, lines 10 and 11, the words "otherwise in connection with law enforcement proceedings by the Federal Government" and substitute therein "by reporting unlawful conduct to a law enforcement official."

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. JEFFORDS. What this would do would be to remove the language which seems too restrictive.

Mr. BEDELL. Would the gentleman yield? Would you repeat?

Mr. JEFFORDS. On page 27, lines 10 and 11, I would strike the words "otherwise in connection with law enforcement proceedings by the Federal Government." I would substitute therein "by reporting unlawful conduct under the act to a law enforcement official." It would read "except pursuant to authority from the Secretary or a court order or by reporting unlawful conduct to a law enforcement official," et cetera.

The purpose of this, as I mentioned a while ago, is that I think the language presently is too restrictive in that law enforcement proceedings implies something already in process, in reaction to questioning by law enforcement officials, and so forth, and also it restricts reporting pursuant to an investigation by the Federal Government. This would also include unlawful conduct whether or not it be criminal. It would be unlawful under the act.

It would broaden the authority of the inspection official to report unlawful conduct to either a State or a Federal law enforcement official in hopes of insuring that the act is properly enforced.

Mr. THONE. Will the gentleman yield?

Mr. JEFFORDS. Yes.

Mr. THONE. Under your amendment, a former inspector could not report any of this information to a newspaper reporter or he would be subject to a misdemeanor violation. Is that correct?

Mr. JEFFORDS. That is correct.

The CHAIRMAN. Has the gentleman completed his comments?

Mr. JEFFORDS. Yes.

The CHAIRMAN. Mr. Jenrette.

Mr. JENRETTE. I would like to go back to Mr. Harkin's amendment. Not having section 17(g), I wonder if former officers or former employees would be covered by Mr. Harkin's amendment.

Mr. HARKIN. This section 20 which is in the committee print replaces section 17(g) I was talking about.

So my amendment basically does away with the present or the former, either one. It would cover both.

The committee print covers present or former.

Section 17(g) as it is in the act now covers present employees.

Mr. JENRETTE. Thank you.

The CHAIRMAN. Mr. McHugh.

Mr. McHUGH. This is getting a bit tortuous. May I have the attention of counsel for a second?

Let's go back to Mr. Krebs' substitute with reference to the word "criminal."

As I understand what you have said, in the committee print in another section, the Secretary of Agriculture has discretion as to whether or not he proceeds civilly or criminally.

But as I understand what Mr. Krebs' substitute says, it is that if the person reasonably believes the conduct to be criminal—I don't have the exact words—then he would be free to divulge the information.

I presume that inasmuch as the Secretary in his discretion could proceed under the criminal statute, the person who would be divulging the information could reasonably believe that the conduct is criminal.

Is that your opinion as well?

Mr. BOR. That is correct.

But there is one thing which you might want to keep in mind. Assuming the Secretary has made his election and there is a proceeding in progress for civil penalties and if somebody wants to divulge information that would be of assistance in connection with those proceedings, then a question would arise as to whether he would be allowed to do so under this provision.

If the Secretary had not made his election, then, Mr. McHugh, your statement would be correct.

Mr. McHUGH. I have one more question.

With regard to Mr. Jeffords' substitute I would like to say this:

Would it be possible under your substitute that we would be eliminating a person from divulging information in connection with law enforcement proceedings? You have taken that language out of the committee print. Would the language you are substituting be broad enough to cover the situation covered by the language which you are now taking out?

Mr. JEFFORDS. I believe it would be. Perhaps it is not broad enough. Perhaps we ought to relieve the person reporting from showing that the conduct was actually unlawful. It has been suggested we ought to ask unanimous consent to reword it to read "by reporting that conduct suspected to be unlawful under the act." So that it would not place the person in a position of having to prove in order to be out from under the statute that the conduct was actually unlawful.

The CHAIRMAN. Is there any objection to the amendment of the gentleman from Vermont?

Mr. Krebs.

Mr. KREBS. Mr. Chairman, I have to confess that I may possibly have been somewhat premature in my enthusiasm for the amendment to my substitute brought up by the gentleman from Georgia.

In light of the discussion that has ensued, I will ask unanimous consent to delete the term "criminal."

The CHAIRMAN. The gentleman from California asks unanimous consent.

Mr. THONE. Mr. Mathis is not here to defend himself.

What would this delete?

Mr. KREBS. It deletes the word "criminal."

The CHAIRMAN. Let me state your request.

The gentleman from California asked to strike the word "criminal" conduct in his amendment.

The gentleman from Nebraska reserves the right to object.

Is there objection?

Hearing none, so ordered.

I think at this point we ought to consider what is before the committee.

There is an amendment by the gentleman from Iowa, Mr. Harkin, which would repeal section 17(g) in the Grain Standards Act and substitute for the committee section 20 a repeal of the section 17(g). This would remove all criminal penalties for the disclosure of information received under the act other than the existing U.S. Code provisions which prohibit disclosure for personal gain. Is that correct, Mr. Harkin?

Mr. HARKIN. Yes; that is correct.

The CHAIRMAN. There is a substitute offered by Mr. Krebs which would add to the language of section 20.

Mr. Krebs, would you read the language?

Mr. KREBS. "Nothing contained herein shall be construed as prohibiting such employee from divulging information which he reasonably believes involves conduct, on the part of another individual or entity, prohibited under this act."

The CHAIRMAN. To Mr. Krebs' substitute an amendment is offered by Mr. Jeffords which would strike the language of the substitute just read and amend the language of the committee print.

I think, Mr. Jeffords, you had better read that.

Mr. JEFFORDS. It would strike the language on lines 10 and 11 and substitute therein "by reporting conduct suspected of being unlawful under the act to a law enforcement official."

The CHAIRMAN. Are there any questions regarding the parliamentary options before the committee?

Is there any further discussion?

Are you ready for the question?

The question will first occur on the Jeffords' amendment to the substitute.

Next it will occur on the substitute itself and then on the amendment.

All those in favor of the Jeffords' amendment to the Krebs' substitute raise their right hands.

The CLERK. Four.

The CHAIRMAN. Opposed?

The CLERK. Ten.

The CHAIRMAN. There being 4 ayes and 10 naves, the amendment to the substitute is not agreed to.

Mr. Harkin.

Mr. HARKIN. Have we cut off debate now on the substitute? I thought we called the question——

The CHAIRMAN. You may have further debate.

Mr. HARKIN. I ask for that.

I would point out that it seems to me that whenever you are dealing with laws we tend to make them so elliptical and they become so involved that no one understands them.

The Code of Federal Regulations and the U.S. Government Manual are from the Freedom of Information Act. Both of these I think aptly cover trade secrets and commercial and financial information and privileged information.

It seemed to me that let's face it: If you have an inspector who may not be familiar with the Code of Federal Regulations and who may not be familiar with the Freedom of Information Act and what it covers and what it doesn't cover, then if you have perhaps a private enterprise that is dealing in grain then what they might show to that inspector might be this section.

They might show him that he cannot divulge any of that stuff or he might be liable for a penalty. Or he might be liable to a civil case brought by the Secretary of Agriculture.

That is unless he reasonably believes it involves conduct prohibited under the act, and then it seems to be the burden shifts to that employee to prove somehow that he reasonably believed that it was conduct prohibited.

It seems again that there is a sword being held over the head of that inspector to I think in effect gag that inspector regardless of whether he thinks it is illegal or not.

He may not, as I said, understand what the Code of Federal Regulations or the Freedom of Information Act specifically covers and does not cover.

I think they both are adequate. I think just by leaving the language of section 20 as it is with the Krebs amendment still leaves a gray area in there for certain persons to unduly influence a grain inspector who might otherwise want to divulge some of the information that he considers might be unlawful or illegal in the grain trade.

So, Mr. Chairman, while I respect the gentleman from California's intention, I think it further confuses the law and further leaves wide open the gray area in there. I think just by doing away with it we would be further ahead in taking care of this gag rule.

I yield back the balance of my time.

The CHAIRMAN. Mr. Bergland.

Mr. BERGLAND. Mr. Chairman, I note from the two documents distributed, reference is made to employees of the Department of Agriculture. In other words, they are prohibited from certain activities.

The committee print goes beyond that to include the "employees of the USDA or employees of official inspection agencies or any present or former licensee who shall make," et cetera, et cetera.

It would seem to me that striking the section would simply place a limitation on disclosing information upon employees of the USDA and eliminate any such restriction on employees of inspection agencies or former employees of the agencies.

The Krebs substitute would continue to place a limitation on that: would it not? The net effect then would be to remove any and all limitations on employees of inspection agencies and confine the restrictions to current employees of the USDA.

Mr. HARKIN. I had not thought about that.

The CHAIRMAN. Has the gentleman concluded?

Mr. BERGLAND. I will get the answer later on.

Mr. HARKIN. The gentleman from Minnesota may have a good point.

Mr. BERGLAND. In light of that I believe the Krebs substitute would be more appropriate.

The CHAIRMAN. Mr. D'Amours.

Mr. D'AMOURS. I have a short question of Mr. Harkin.

The Code of Federal Regulations and the Government Manual and the provisions you have shown us, do they cover a penalty? If so, what is it? A violation of these directives covers what kind of penalty, if any? Is it a misdemeanor?

Mr. HARKIN. The Code of Federal Regulations, I am sure, does. I don't know what the penalty is. Perhaps counsel could help me on that. There would be penalties that would apply to violations of the Federal Regulations. I don't know exactly what they would be. I assume they would be as strict as the ones in this bill, if not stricter.

Mr. BOR. The section from the U.S. Government Manual, which is a section that deals with the Freedom of Information Act, is a provision addressed to the Federal Government which says that if a citizen makes a request for information from the Federal Government, then there is an obligation to produce that information with certain exceptions. One of the exceptions relates to trade secrets.

If a person requests the Federal Government to release information which is in the nature of a trade secret, then the Government could, if it wishes, refuse to make that information available to the requester. It is not obligated to but it could if it wishes.

It does not apply of course to information which is in the possession of people who are not employees of the Federal Government.

The other provision that you referred to deals with standards of conduct of officials of the Government. If those provisions are violated, then there are sanctions which the Government can undertake against the individual who had violated the section. He could be removed from service or suspended from service or receive a letter of reprimand.

Mr. D'AMOURS. I would like to be sure about this.

What you are saying is that in effect although section 20 of the amendments we are considering carries criminal sanctions, if we were to adopt the Harkin amendment there would be no criminal sanction for disclosure of trade secrets? There may be sanctions but they would not be criminal sanctions.

Mr. BOR. The Freedom of Information Act gives the Federal Government the right, if it wishes, not to make available information that is in the nature of trade secrets. But the Government is not required to make use of that exemption.

Generally the Government refuses to make available information that is in the nature of trade secrets.

Mr. HARKIN. Will the gentleman yield?

Mr. D'AMOURS. I will yield to the gentleman from Iowa.

Mr. HARKIN. But under the Code of Federal Regulations, which says that an employee is prohibited, that would be covered under the sections.

Mr. BOR. There would be a section there against the employee who violated that particular section.

Mr. HARKIN. That is correct.

Mr. D'AMOURS. Would that be a criminal sanction?

Mr. BOR. No, the sanction is disciplinary action. In some cases the conduct is also subject to criminal sanction.

Mr. HARKIN. I would ask counsel to check on that.

Mr. BOR. On that issue I am not sure.

Mr. HARKIN. I think the violations of the Code of Federal Regulations there are sanctions.

Will the gentleman yield?

Mr. D'AMOURS. Yes.

Mr. HARKIN. If the gentleman from Minnesota will yield, let me respond to that question.

Your point was that my amendment, if you struck out these sections, then it would apply only to employees of the Department of Agriculture, not to any contract personnel that might be contracted.

I don't think that is true because what we are talking about here is a prohibitive type of law.

In other words, a person would contract with the Department of Agriculture and would have no law governing him which would say that he was prohibited from divulging this information as long as it was not a trade secret or some other type of activity dealing with the trade.

The CHAIRMAN. I do not think that is correct. If you repeal section 17(g), there is no prohibition on the disclosure of information reported to the Department of Agriculture and not used for the purpose of personal economic benefit. Is that correct, counsel?

Mr. BOR. That is my understanding.

Mr. HARKIN. However, if I am a private individual and I am just contracting with the Government and on my own I release information which is a trade secret or dealing with financial or commercial business interests, then that leaves me wide open for civil suit by the company whose trade secret I divulged.

That it seems to me would be more in the nature of a prohibition against my divulging it than anything else.

The CHAIRMAN. I fail to follow the gentleman's argument.

I think the public policy is not to prohibit the release of this information.

I don't know on what grounds the suit would lie if the individual does not have any contractual relationship. Further, I do not see how you can have a liability question.

Mr. NOLAN. I have a question of counsel.

In other instances where the Federal Government contracts with States or private agencies for carrying out responsibilities which Federal officials are doing also, is it customary to expect the same codes or ethics applied to them as apply to the Federal officials? Or are they more or less on their own?

If that is true, that is that they are on their own, then would the Krebs' amendment be a significant step in changing that tradition?

I understand that the Krebs' amendment would apply not only to Federal officials but to State and private inspection agencies as well.

Mr. BOR. The answer to your first question would depend upon the nature of the contract that the Federal Government worked out with the State or with a private agency.

If they did have something specific in the contract, that would be a violation of the contract and would give rise to certain contractual remedies, but in the absence of that the prohibitions that exist in the U.S. Government Manual are prohibitions that apply solely to U.S. Government employees.

Mr. NOLAN. Yes. I see.

So in answer to my second question then, the Krebs' amendment would bridge that gap and specify in the law that the same clause applies not only to Federal employees but private agencies and States as well? Is that correct?

Mr. BOR. Yes.

Mr. NOLAN. I would presume there would be a way of amending the Harkin amendment so that it would apply to both State and private inspection agencies as well. Is that not correct?

[No response.]

The CHAIRMAN. Will the gentleman yield?

Mr. NOLAN. Yes.

The CHAIRMAN. The Harkin amendment would repeal all prohibition against the disclosure of information except as is in the U.S. Code that prevents an employee of the U.S. Department of Agriculture from disclosing information for personal gain. Is that correct?

Mr. HARKIN. I believe that is correct.

The CHAIRMAN. The Freedom of Information Act really is not relevant. All that does is to prevent the Department from being forced to disclose information in accordance with the demands of the Freedom of Information Act.

There is nothing prohibiting individuals from disclosing information.

Mr. HARKIN. In light of what the gentleman from Minnesota—the other gentleman from Minnesota—has said, and in light of what the chairman has brought up in terms of the contracting personnel, perhaps the Krebs' amendment might be the best means of attacking the problem.

The CHAIRMAN. Is there further discussion? If not, the question now occurs on the substitute by the gentleman from California, Mr. Krebs.

All those in favor of the substitute raise their right hands.

The CLERK. Twenty.

The CHAIRMAN. Opposed?

The CLERK. None.

The CHAIRMAN. There being 20 ayes and no nays, the substitute is agreed to.

The question occurs on the Harkin amendment as amended by the Krebs' amendment in the nature of substitute.

All those in favor signify by saying aye and those opposed, no.

The amendment is adopted.

Are there other amendments?

Mr. Bergland.

Mr. BERGLAND. Mr. Chairman, I am wondering if counsel can help me on a point.

It would seem to me that there would be some considerable value in inviting representatives of foreign buyers to witness the loading of grain at an export facility.

I do not think it is expressly prohibited by law at the moment.

I have talked with certain people in the grain business, and they tell me that they would feel a lot more comfortable if they could explicitly invite a representative of a foreign buyer to observe the loading of grain that goes into a vessel destined for that buyer's off-shore location.

It ought to be a standard operating practice. If the overseas buyer of the grain is inclined to exercise that option, then so be it.

But I am told through contacts with the grain industry people, particularly in the Midwest, that foreign governments or foreign buyers are very reluctant to bring a person to the export position for whatever reason.

I wonder if counsel could tell me whether or not it is currently prohibited by law and whether or not it would be appropriate to incorporate language either in the committee bill or in the committee report that would convey an open invitation of welcoming a foreign buyer or his agent to observe the loading.

Mr. BOR. I am not aware of any provision of law that would prohibit foreign buyers from being present and observing the inspection of grain at any particular point. As a matter of fact, I think at times foreign buyers do have representatives present at the time the grain is inspected.

The issue may be one of assuring that a foreign buyer would have access to the premises of a grain elevator or other private property so that he would be able to observe the inspection procedure.

Mr. BERGLAND. I am informed that at least on one occasion, and this was reported to me secondhand, a foreign buyer attempted to have a representative of its choosing at the site where grain was being loaded bound for that buyer's market. That right was denied. The representative was run off the place.

I don't know if this is common practice, but I think it would be very, very useful to invite and expressly solicit the appearance of the delegate of a foreign buyer to observe the loading of the ship.

I think it would provide them with some protection and some comfort. It cannot do any harm that I can see.

There again the representative of the buyer would be on location. He could be sure that the loading was done to the specifications of the contract. It ought to lead to some improved relationships between the buyer and the seller.

Mr. POAGE. I realize that in 99 cases out of 100 it would be a foreign buyer but conceivably they could be a domestic buyer. Why not say just say any buyer?

Mr. BERGLAND. I would have no reason to limit it to foreign buyers. The gentleman's point is well taken.

Mr. Chairman, I am rather frustrated here. I don't exactly know what the law is and I don't, therefore, have an amendment. I don't know quite how to proceed. But I think this point ought to be incorporated at some place.

Mr. BOR. I don't think there is any provision of law which would prohibit a foreign buyer from being present.

What you might wish to do is to add an additional section to the committee print which would give the foreign buyer access to the premises of a grain elevator or other facility for the purpose of observing the inspection of grain which is being conducted under the authority of the Grain Standards Act.

Mr. BALDUS. In that regard I was somewhat troubled by the exercise we had formerly gone through. Although the transaction may be a private transaction between the buyer and the seller and they may both be private persons, earlier in the act we described an official inspection. The question is: Is that inspection also a private thing that cannot be revealed or is it more, because of its nature in this case, an official inspection and a public kind of thing also?

So I am looking at the earlier parts of the act in which it describes that official inspection. That power is not responded to there.

Can you enlighten me on that?

I understand it may be on private property, but still we are causing by law an official inspection which we assume gives the right of egress and ingress.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. Baldus.

Mr. BALDUS. Can you give me any help on the nature of that act?

I understand that the official inspector, since it must be done, must be given right to private property.

Does that include the right of other persons such as Mr. Bergland is concerned about? Does it then become a public act?

Mr. BOR. The mere fact that you have an inspection under the Grain Standards Act does not make the inspection a public act. In a sense what the act does is to provide for a system for determining grades in a private transaction between buyer and seller.

I understand that one of the reasons for the provision in the current act, which prohibits disclosure of information, is that the parties to the transaction are anxious to determine what the quality and what the grade of the grain might be for their own information. But they do not necessarily want that information broadcast at large and made generally available to the public.

I do not believe that when you have an official inspection conducted under the Grain Standards Act that any member of the public necessarily is entitled to be present if the owner of the premises and if the parties themselves do not desire this to be the case.

Mr. BERGLAND. Will the gentleman yield?

Mr. BALDUS. Yes.

Mr. BERGLAND. Obviously we are not prepared for this at this point. I will seek counsel's advice and construct an amendment and bring it up at the next meeting of the committee.

The CHAIRMAN. Will the gentleman from Wisconsin yield?

Mr. BALDUS. Yes. I yield the balance of my time.

The CHAIRMAN. I recognize the gentleman from Texas.

Mr. POAGE. I want to point out that this seems to me to emphasize the fact that it is not legislation that we need in this whole thing. It is a new system of trading.

The trades can protect themselves, foreign or domestic, and all the Government really needs to do is to give people who are trading an opportunity to protect themselves.

If foreigners or domestic purchasers want grain at the ports and their own inspection, then they have no opportunity to complain. Why the Government should set itself up there and take the blame is a point I have not understood.

The further we go into this thing, the more mysterious it seems to me.

If the Russian Government which buys all the grain for Russia wants to inspect this grain in New Orleans, then let them inspect it. If the company that is selling it to them doesn't like their grades, then they are just not together and they have not made a sale.

But what we are doing now is putting the U.S. Government in there and saying "Yes, Mr. Continental Grain Co., you brought this grain down here and you say that it is a certain quality and the Russian Government says that it is not that quality"; all you need to do is say that there is no sale.

Why should the U.S. Government step in there and tell them what it is and take the responsibility for it and grade it and then when it gets delivered somewhere, then it is going to appear that the U.S. Government is backing down on its own inspection when it turns out to be something less than it should be? Then the U.S. Government gets the blame for it. Why should the U.S. Government get the blame for it? Why should not the individual or the company or the country which wants to buy the grain do its own inspection here? If we give them the opportunity to do that inspection, then what more do we need to give?

I agree with the gentleman from Minnesota that the opportunity should be provided, but after we have given that opportunity, then why should the U.S. Government inject itself at all?

MR. GRASSLEY. Mr. Chairman, along the line that Mr. Poage stated just now, in the briefing we had from the General Accounting Office people earlier, they stated that it was standard procedure when Japan bought from us that they did have U.S. inspection.

Is that what Mr. Poage is suggesting that we would encourage all countries to do?

MR. POAGE. I am suggesting that we should encourage anybody who wants to buy grain to inspect it themselves to make their own decision as to its grade rather than giving the appearance of having the Government guarantee the grain.

I know the Government doesn't guarantee the grain under this, but for all practical purposes we put the U.S. Government in the position of apparently guaranteeing the grain.

MR. GRASSLEY. I am not arguing with you.

I am just wondering if you are suggesting that that be done by the U.S. Government personnel whereas in the case of Japan it is done almost automatically or if that should be done by foreign nationals coming to America to do the inspection.

MR. POAGE. I am suggesting we do it just like we do on cotton. If somebody wants to accept my grade and I put a stamp on it, then they have a perfect right to accept it. They don't have to.

If they want to send their own inspector here and make a place for him, then we can let them inspect it if they want to. If they want to accept something else, then that is all right also.

But we should make them make the decision, put the burden on the foreigner who is buying the grain to be satisfied at the time it leaves our port. Then it is up to him. If it gets there in bad condition, then that is his trouble, too.

We should make him inspect that at our ports or accept Continental's or Bunge's or accept anybody's statement as to what it is if he wants to.

We have done that in the cattle business always. We still do it.

You can look at the cattle you buy and you can buy them through a buyer if you want to and accept his views of it. Many of them are bought that way.

But basically the man who buys the cattle looks at them himself and decides what he is buying.

Let's make these people look at the grain themselves and put their own determination on it.

Mr. GRASSLEY. Thank you.

The CHAIRMAN. I recognize Mrs. Heckler.

Mrs. HECKLER. I have an amendment.

The CHAIRMAN. The lady will state it.

Mrs. HECKLER. It goes to page 10 of the committee print. It relates to the conflict of interest standard.

The New York Times reported on Sunday that the standards of American grain have threatened to cut our sales abroad, and in terms of protecting the interests of American farmers and this aspect of the balance of trade, the weakness of the current conflict of interest provision relates to a general weakness in the law. The Grain Standards Act of 1968 prohibits ownership of interest in a grain company by inspection agency personnel, but it does not prohibit ownership or interest in an inspection agency by grain company personnel.

So today grain company stockholders and officers can own an interest in the agencies inspecting their grain.

This situation is really not uncommon.

It seems to me it is rather like having a Federal judge own stock in a company whose case is before him.

It seems to me also that if this bill is going to have any credibility then there should be a clearly-defined section on the conflict of interest replacing the present wording, and I think the best approach is the prohibition against cross investment between inspection agency personnel and grain company personnel.

The amendment I propose sets a clear standard and will provide for fair inspection, quality exports, and satisfied customers abroad.

Mr. THONE. Is this the same amendment that is in the Senate bill?

Mrs. HECKLER. No, it is not.

Mr. THONE. I notice here that you have the stock interest matter in here that the Chairman raised previously.

If one of these people had one share of stock in the Union Pacific Railroad, would they be disqualified from the inspection procedure?

Mrs. HECKLER. There is no doubt what we are trying to set out here is a clear standard for conflict.

Under the wording as I propose it, yes. But I would not be adverse to allowing for a transitional period in which a person could transfer stock ownership into a trust or another vehicle. But it does prohibit this cross ownership which is one of the weaknesses of the conflict of interest as it is written.

In the committee print the conflict of interest is so vague as to constitute virtually no protection whatsoever for the purchaser.

I think the person who is really being forgotten in this is the American farmer whose grain should be sold with standards of integrity. This is threatening the sales down the line, not this year but ultimately, and is so substantial a problem that the New York Times saw fit to write extensively about it on the front page of Sunday's paper.

I think this conflict of interest question remains a problem because we have had 57 indictments of grain inspectors.

Mr. BERGLAND. Would the gentlelady yield?

Mrs. HECKLER. Yes.

Mr. BERGLAND. While I am sympathetic with what you are setting out to do and I support the general thrust of the proposition, I am troubled about one point. I think a clear distinction must be made between an agency, such as a grain exchange, where there are members engaged in the transportation or the storage of grain sometimes.

Under that business arrangement known as a board of trade you have buying and selling forces at work and competing with each other. That is the nature of the public marketplace. It works extremely well, I think. It is regulated. It is truly competition at its best.

I am familiar with at least one board of trade engaged in the business of weighing of grain. If the employee of that board of trade were to tilt in favor of either the buyer or the seller, that employee would lose his or her job. If the employee would tilt the weight in favor of the buyers, the sellers would object. The buyers and sellers both serve as the employee's employer in that instance.

I think a distinction should be made between a public marketplace where we have those competitive forces at work. As the gentleman from Nebraska has said, it is essentially self-cleansing. I think Mr. Thone makes an excellent point.

Your amendment does not make distinction between that kind of marketplace and the places where you do not have the competitive forces at work. You may have a local boosters' club or a local chamber of commerce representing the employing agency and in the town there may be only a facility for buying grain for export purposes.

There you can have problems. And I appreciate what the lady is saying.

But I think your amendment does not make the distinction between that sort of arrangement and the public place where you have the competitive forces.

Mrs. HECKLER. I would like to ask the gentleman what percentage of grain for export passes through a public exchange as opposed to the percentage of the commodity which would go through a private exchange or a private system.

Mr. BERGLAND. I don't know the percentage. It is substantial, however. There is a substantial quantity that moves through the public place.

I think the public grain exchanges ought to be authorized to continue to do the service. I think they do a good job.

We ought not with the stroke of a pen preempt them.

My question is this: Would the net effect of your amendment be to disallow a public board of trade from engaging in the weighing and inspecting of grain?

Mrs. HECKLER. I would have to call upon counsel to give us a legal opinion on this. But frankly speaking, if the larger share of the commodity passes through a public exchange, then the present system does not provide deniability or credibility and is open to scandals of such great proportions that we have a problem today, I would personally find that public exchange system not quite as protective of the customer or the farmer as it should be.

I would like to have counsel respond as to what the actual ramifications would be.

Mr. MURRAY. As I understand your amendment, and if the philosophy were translated into baseball, then the umpires would not be paid by either of the two playing teams nor, conversely, would the umpires own stock in either of the two ball clubs playing. They are a private organization. They are not Government clerks. They are hired by the league and they are responsible to the fans and to the public for their performance of their duties.

They try to be fair and impartial in the calling of the balls and the strikes and sometimes they make mistakes.

The private institution is supposed to be devoid of an interest in other clubs nor do teams have an interest in them.

That is the philosophy that the committee has voted to shoot at—making public clerks the people who inspect the grain that goes overseas.

I am sure the Government and the USDA would not allow a Federal employee of the Agriculture Department to own a stock in the ABC Grain Co., nor would they allow the ABC Grain Co., to hire a USDA clerk to make speeches at night and travel around the country for an extra fee on behalf of the grain company.

You are shooting for integrity in the handling and inspection of grain.

That is what Mrs. Heckler's amendment is shooting at. That is to set up an independent adjudicatory system of umpires to grade this material in the domestic markets at least.

You have already voted to make the Federal Government grade it for overseas shipments.

So in answer to your question: No; they would not be automatically disqualified, but under the way she has worded her amendment if the board of trade members or the individuals who are affiliated with it own stock in the grain entities or vice versa, then they would not be qualified to be umpires.

The CHAIRMAN. Time has expired.

Mr. Bedell.

Mr. BEDELL. Would it not be correct, however, that in the case of the grain exchanges or the boards of trade we are talking about it would not be one of the ball clubs hiring the umpire. It would be all of the ball clubs in the league hiring the umpire. Wouldn't that be what we are talking about?

Mr. MURRAY. It could be an analogy drawn closer to it that way.

If you say that there is not to be a substantial or a measurable or a specific amount or there is an exception for leagues rather than clubs, then you could rationalize through that there has been a search for an independent adjudicator.

I am sure that is what Mrs. Heckler is trying to do.

Mr. BEDELL. There are some of us who would like to see more work done on this amendment to see if it could accomplish what Mrs. Heckler wishes to accomplish without necessarily ruling out those situations where they would be self-cleansing in the interior markets.

I would hope that we could have a little more time for some work on this before we pass it.

Mr. MURRAY. Let me give you a little more background.

The amendment which you have before you is in essence the language that the Department of Agriculture sent to us after Mr. Foley had the colloquy with Assistant Secretary Feltner about how difficult it would be to interpret and to administer the original language that USDA had in their bill on conflict of interest.

The Department sent this basic language.

They did, however, have the words "substantial interest" in the text of their amendment. They went on to define in a separate section what substantial interest meant in terms of how much stock an umpire could own in a ball club and still be a fair umpire.

But the amendment that Mrs. Heckler has deletes the words "substantial interest" and leaves it so that they cannot have an interest in it at all.

Mr. BEDELL. I think we are getting into something that is very difficult and is questionable in many of our minds.

What we are really asking is: Should we permit grain exchanges and boards of trade to continue to operate grain inspections systems within the interior marketplace?

Mrs. HECKLER. Is it not possible to have a board of trade system operate and still set a higher standard, as I have suggested, for the inspectors?

This would be to respond to the widespread corruption which has been found.

Is it not possible to maintain the system, the operational aspects of it, and at the same time set a standard which places the inspector in the position of an adjudicator who is objective and not beholden to either side?

Mr. BEDELL. I think the question is: "How do we do what you would like us to do?"

I am afraid we may pass an amendment which goes quite a long way beyond what we may have to do in order to accomplish what you would like.

Mrs. HECKLER. Why is it that it is not possible to require this divestiture or this independence of the grain inspectors? Why is that an impossible standard?

Mr. BEDELL. Anything is possible. But I think we need to realize that if we pass your amendment, then what we are doing is saying that it will be necessary for all grain exchanges or boards of trade who now operate separate inspection agencies, which they do in many cases, for them to cease to operate those inspection agencies.

Maybe we should do that. I don't know. But I think that is really what we are voting on when we vote on your amendment. I think we should be aware of that and aware of the consequences of what we are doing if we vote for that.

The CHAIRMAN. I am concerned again about the language in the gentlelady's amendment. It would be extremely difficult to administer.

What the amendment proposes is that no private or governmental agency involved in inspection could engage any other business activity related to the warehousing or merchandising of grain or have an officer or employee connected with the inspection process. Moreover, there could be no ownership or investment with any companies who deal with the merchandising of grain.

If I read the amendment correctly, that is what it does.

If the States of Louisiana, Washington, or Idaho, for example, had any employee connected with grain inspection who owned a single share of railroad stock, he would be in a conflict of interest situation.

The question is whether you want to get to the point of saying that no officer or employee shall have any ownership of any kind, however slight, in any other business firm that has any relationship at all to the merchandising, warehousing or transportation of grain.

As far as I know, that is an unprecedented standard of conflict of interest which, as a practical matter, would be extremely difficult to maintain even with the best of intentions.

You would have to have full financial disclosure from every single employee or officer connected with such a corporation or Government entity.

I recognize Mr. Baldus.

Mr. BALDUS. I am sympathetic with the lady's amendment. I can understand that she feels that the word "substantial" as sent over from the Department of Agriculture may be a bit overbroad.

I have a question of counsel.

I refer to a change in the amendment slightly so that after the words "any financial interest" insert "sufficient to cause a conflict of interest."

The reason I bring up that point is that a person might not even have a full share but might have a share of a retirement or part of a mutual fund or something like that. This clearly would not cause conflict of interest.

But by adding "sufficient to cause a conflict of interest," the Department, if they chose, could issue some standards to say that this would be so and so and would be substantial.

Mr. MURRAY. That is a phrase that would have to be interpreted as to what it was. Was one share of stock in the ABC company sufficient to cause a conflict of interest, whereas one share in one of the big grain companies that is closely held might be a lot of money.

It would be a factual determination which would have to be made.

The Department draft searched for that by using, instead of your words, the words "substantial interest." They used the same idea to try to set up a standard. Then the Department draft went on to define what a substantial interest was or, as you are expressing it, an interest sufficient to cause a conflict of interest.

What the Department used was this definition. It could be modified along the lines that you think it should be or the way the committee would want to do it.

A substantial stockholder of a corporation shall be any person holding 2 percent or more or 100 shares or more of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to any other entity if it owns or controls or is owned or controlled by such other entity or both entities are owned or controlled by another entity.

That is a way to define what would involve a conflict of interest.

Mr. BALDUS. I yield back the balance of my time.

Mr. FITHIAN. I don't know exactly how we want to split the hairs on this, but I do think that we ought to commit ourselves as a committee to come down in favor of something very much like this. It may take a definition of what sufficient conflict of interest is.

I think the grain industry is now so consolidated at the top that its tentacles reach out into the industry at so great a level and in such an entangling fashion that we have to have something like the Heckler amendment or some approximation thereof in order to cut through once and for all an industry which is already overly consolidated and has gotten us into exactly the position of scandals that we see today.

Mr. GRASSLEY. It would seem to me that for those of us who want to have some private inspection, particularly at the interior points, that a strong conflict of interest provision—I don't know whether it is too strong or not strong enough—is what we need to see that private inspection will work. This is as opposed to turning it all over to the Government.

If we are going to have private inspections to overcome the faults that have brought this issue to a head, then the core of the whole thing is a strong conflict of interest statute.

Mr. FITHIAN. I yield back the balance of my time.

Mr. BALDUS. If there is no further discussion, I will offer the amendment that I suggested. It would follow the words "financial interest 'sufficient to cause a conflict of interest.'" I presume we leave the interpretation of that somewhat to the Department.

So in my words that would leave "sufficient to cause a conflict of interest" inserted after the word "interest."

The CHAIRMAN. Will the gentleman yield?

Mr. BALDUS. Yes.

The CHAIRMAN. The committee print provides that the Department and the officially designated inspection agency shall insure that there is no ownership or other participation by officers, employees, and so on, to create a conflict of interest.

The gentleman wants to keep this language and to then insert the words: "sufficient to cause a conflict of interest."

Mr. BALDUS. I don't understand.

The CHAIRMAN. What I am suggesting is that by another route you are getting around to what is in the committee print unless you want to further define what constitutes a guideline for a conflict of interest.

Otherwise it leaves it to the Department to do it by regulation or administratively.

Mr. BALDUS. I am not overanxious to say who the determiner is. My intent was to soften this language.

The CHAIRMAN. If you add the words "sufficient to cause a conflict of interest," you simply leave with the Department of Agriculture the judgment as to whether the ownership or participation is sufficient to cause a conflict of interest.

I am suggesting that it really gets you back to the committee print.

I wonder if counsel could comment on that.

Mr. BOR. The language in the committee print is the language which is in the first few lines of the document that is entitled "Amendment Offered by Congresswoman Margaret M. Heckler."

That language provides that:

No official inspection agency or any member, officer, employee, or stockholder thereof shall have such a conflict of interest, either directly or indirectly, in any business involving the transportation, storage, merchandising, or other handling of grain or use of official inspection service as to jeopardize the integrity or the effective and objective operation of the inspection service performed by such agency.

The way this provision would work is that in order to be designated as an official inspection agency, a private agency, or a State agency would have to demonstrate to the satisfaction of the Secretary that it met this standard.

The Secretary would have the obligation of determining on a case-by-case basis whether there was such a conflict of interest in the inspection agency as to jeopardize the integrity or the effect of an objective operation of the inspection service.

Mr. BALDUS. Do I understand the chairman to say that by adding that amendment that we have gone full circle and eliminated the intent of the amendments, that we are back to the same place we were?

The CHAIRMAN. Would the operational effect of the amendment to the amendment come back to the position of the print?

Mr. MURRAY. It would be similar but not the same. The Heckler amendment is broader and covers more groups and institutions. But it searches for the same concept that it not apply a fixed, rigid standard but apply one that weighs what is or is not substantial or what is or is not a conflict of interest.

But somebody is going to have to decide that. It would be the Secretary or the Assistant Secretary or somebody in the grain division who would have to decide on a case-by-case basis what is or is not a conflict of interest.

Mr. BALDUS. But eventually it would become a legal decision.

Mr. MURRAY. There would be a policy that would be laid out, I am sure, as to what is or is not. The legislative history of the bill would help create that.

Mr. BALDUS. I offer the amendment and I will see what happens to it.

The CHAIRMAN. Will the gentleman state it again?

Mr. BALDUS. On the fifth line of the paragraph that begins "Insert in lieu thereof" you would insert the words "financial interest sufficient to cause a conflict of interest in any business involving the transportation," et cetera. The new words would be "sufficient to cause a conflict of interest." This would be inserted after "financial interest."

The CHAIRMAN. Do you want to include it in the following paragraph?

Mr. BALDUS. Are there other places where that should be added?

The CHAIRMAN. You may wish to add it on line 11, beginning "or shall operate or be employed by or directly or indirectly have any stock or other financial interest in," et cetera.

Mr. BALDUS. Similar language should be placed there also in order to be consistent.

The CHAIRMAN. The Chair is going to make a suggestion.

It is now 11:25. Because this is a key provision, perhaps the gentleman from Wisconsin could consult with counsel to form his amendment before we vote on it. We want it to express exactly what he wants.

Is there any objection to our putting over consideration of this amendment or any amendment thereto until the next meeting so that Mr. Baldus may perfect it?

Without objection that is agreed to.

Mr. Harkin.

Mr. HARKIN. I would just like to ask the members before the next meeting in regard to this amendment to look at the present law, section 11.

As Mrs. Heckler has done and as the committee print has done, it leaves intact the present section 11. It only adds something.

I would direct the members' attention to the present section 11 which has a "provided however" clause.

So even with Mrs. Heckler's amendment we still have the "provided however" and it says "provided however that the Secretary may license qualified employees of any grain elevators or warehouses," et cetera, et cetera.

So you have the prohibition against the conflict of interest with the "provided however" clause.

You might think about that for a bit.

Mr. MELCHER. Mr. Chairman, I realize that we are going to adjourn soon, but I have one point to bring up with regard to this bill. I would like to do that without interfering with the discussion that is going on now.

The CHAIRMAN. I think we decided to postpone the gentlelady's amendment.

Mr. MELCHER. There has been a portion of this bill which we in Montana have a particular interest in. That regards protein sampling.

Ordinarily wheat from Montana has high protein content. The premium might be from 2 or 3 cents up to 25 cents a bushel.

So it can be a sizable amount of money for a producer.

We have had a major scandal develop in what is known as the *Big Sandy Elevator* case where the protein content found in Montana was consistently higher than the protein content that was found in Portland, Oreg., when the wheat was shipped from Portland for

export sale. Consequently the elevator was paid on the basis of what the protein content was in Portland. We have a strong suspicion that it was a rip-off and that the elevator was cheated out of many thousands of dollars during the past 2 years.

As a result of that, there has been a Department of Agriculture investigation which was ongoing since sometime last summer and which was completed.

It was forwarded to San Francisco for review by the Department officials in the Grain Division about 6 weeks ago.

We have not been able to secure the information that was garnered from this investigation. I am very anxious that we be advised on what that investigation revealed before we pass the critical point in this bill of offering an amendment to prevent such a happening that could occur in the future.

I bring this to the attention of the committee at this time because the Department continues to persist in holding onto this information without advising me and other members of the committee as to what that investigation revealed. We are handicapped as to just how best to address that problem within this bill. It is important that we address that problem.

I would hope that the Department will release that information to us this afternoon or tomorrow.

I hope they will advise us as to what their findings were before we complete our markup sessions here.

The CHAIRMAN. At this point I think I could advise the gentleman from Montana as to what the present schedule for consideration is.

We have tomorrow a meeting to hear the Honorable Charles W. Robinson, Under Secretary of State for Economic Affairs, to discuss the wheat and potential oil agreements with the Soviet Union.

Thursday, the fourth of December, we have the Domestic Marketing and Consumer Relations Subcommittee which will meet in public hearing dealing with H.R. 9288.

We will take up further considerations of the grain standards on Tuesday and Wednesday of next week.

In the meantime perhaps the gentleman can discuss that point with Department officials. I would be glad to help him in anyway I can.

If there is no further business, this might be an appropriate time to adjourn.

The Committee on Agriculture will stand adjourned to meet tomorrow morning, Wednesday, at 10 a.m.

[Whereupon, at 11:50 a.m. the meeting adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, DECEMBER 9, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 9:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, Jones of Tennessee, Melcher, Breckinridge, Nolan, Weaver, Krebs, Hightower, Bedell, Sebelius, Thone, Jeffords, Kelly, and Grassley.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Steve Allen, staff consultant; Gene Moos, staff analyst; Glenda Temple and Susan Bell, staff assistants.

A quorum not being present, the meeting was adjourned.

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U.S. GRAIN STANDARDS ACT OF 1976

WEDNESDAY, DECEMBER 10, 1975

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 9:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Breckinridge, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, English, Fithian, Jenrette, D'Amours, Sebelius, Thone, Symms, and Grassley.

Staff present: Robert M. Bor, counsel; John E. Hogan, associate counsel; Gene Moos, staff analyst; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order.

A point of order is made that a quorum is not present.

The clerk will therefore call the roll.

[The rollcall follows:]

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Breckinridge, Weaver, Baldus, Krebs, Hightower, Bedell, English, Fithian, Jenrette, D'Amours, Sebelius, Thone, Symms, Grassley, Foley.

The CHAIRMAN. The Clerk will report the results of the rollcall.

The CLERK. Twenty-two members answered when their names were called.

The CHAIRMAN. A quorum, then, is present.

The pending business is the committee print on the U.S. Grain Standards Act.

The Chair would like to make a brief opening statement to the committee.

I had hoped that before the end of this session of the Congress the committee would have completed its work on the grain standards bill. I am increasingly pessimistic that this can be done.

Furthermore, I am reluctant to schedule meetings at 9 o'clock for the rest of this week and next if there is probably little chance that the bill can be reported out.

Also, since the House is meeting at 10 o'clock every day this week and most probably next, this would subject the committee to unavoidable interruptions.

The Chair is advised that other bills and proposals dealing with the inspection program are being drafted.

I would not like to push on, thereby preventing those alternatives from being considered adequately. I don't know what the schedule for return for the second session of the Congress will be. I assume that it will be about the middle of January.

Perhaps it would be better to carry the bill over until we reconvene in January with this to be taken up then as a priority item.

I would like to have the members' reactions to this.

I recognize Mr. Poage.

Mr. POAGE. It seems clear that we are not going to finish the bill by the end of this session. Even if we did, we wouldn't accomplish anything because we couldn't get it on the floor.

It seems to me that this would not be of benefit to anybody to have it at this time. We would have to go over it again in January. People will say that they just don't remember what we did at this time, and everything would have to be reviewed.

To thrash this over twice will not be helpful. So I think that we should hold it over until we reconvene in January. Even this morning I see no purpose in holding a hearing on it.

The CHAIRMAN. I really brought the matter up because if it is the judgment of the committee that we should lay it over, I do not see much purpose in proceeding further today.

Mr. BERGLAND. I think to postpone action would pose no problem except for one concern. Perhaps you can answer my question.

The Secretary currently lacks the authority to conduct original inspections.

I don't know whether or not there would be shipping points that may be closed down because of continued investigations into alleged wrongdoing, but should a shipping point be closed down because involved persons were cited for wrongdoing, the Secretary—under current law—cannot move in.

My concern is that this may shut down a port when it is moving at full capacity. Does anyone know whether or not the Department has indicated any opinions or attitudes on this point?

My question is this. Maybe we should consider sending out a bill that gives the Secretary authority to have original inspection so that he has standby power in case the need arises.

The CHAIRMAN. Does counsel have any information to provide the committee on that point?

Mr. BOR. Mr. Chairman, we do not have any real firm information from the Department at this time as to whether it is a problem that they feel would require action immediately or whether it is something that can lay over until early next year.

Mr. POAGE. What authority does anybody have to shut down a port?

They may find that there has been wrongdoing someplace, but they can kick somebody out; and the authority to carry on inspection remains regardless of the involvement of the individuals. I do not see where there is any authority to close down a port because they have found some wrongdoing there.

Mr. BOR. I think what Mr. Bergland is pointing to is that in a particular area there may be an inspection agency which has had its designation revoked, and there may not be other official inspection agencies that are qualified which are able to undertake the job immediately—either a private firm or a State agency.

If the designation is revoked, then I think he is fearful that there may not be anyone available to conduct inspection at the port.

Mr. BERGLAND. There are a number of locations across the United States at which inspection is conducted by private agencies. In many cases it is conducted by one agency. One group is providing the service.

If that group, or employees of that group, are charged with wrongdoing, they are suspended. Everything stops.

As I understand it, the Secretary cannot move people in to provide the service. They have to go out and find some other private agency to do the work. This can be an interruption of days.

I don't know if it is a real problem or not.

Mr. HOGAN. Mr. Chairman, I think the principal area where the investigations have centered is a State where they have both private and State agencies inspection. That may be something the staff may explore with the Department to see if the State agency could be expanded in the event that a private agency had their license revoked or suspended.

The CHAIRMAN. I think we will have to reach a decision this week because I do not know if it would be possible to clear legislation within the remaining days of the first session.

In answer to Mr. Bergland's inquiry, we might have the Department respond as to whether that is a problem or not.

Mr. THONE. This is not directly on the point, but it is very close.

I had a conversation with the Department yesterday, Mr. Bergland. They were not concerned about this urgency.

The CHAIRMAN. I would think that if an emergency of that kind occurred, the Department might refrain from withdrawing the designation in any way that would interrupt the port for the time that Congress will be out of session. I think, however, that we ought to have advice from the Department on that question.

Mr. MELCHER. I agree with the comments made by the Chair and by Mr. Poage, that is, that it would be better for the committee if we held over further consideration of the bill until after the first of the year.

However, one matter which has come to the committee has been the question of whether or not the protein tests for the big Sandy Grain Elevator, which happens to be in my district, were carried out accurately. There were discrepancies on numerous shipments between the testing in Montana and the testing in Oregon.

There has been an investigation resulting from a request made by the elevator and myself during the past several months. The investigation was filed with region 7 office of investigation in San Francisco. Two copies have been made available to the committee.

I have read through it, and I see nothing in there that is particularly critical insofar as keeping secrets are concerned. I doubt that you can keep investigations secret very long, and I would hope that we are not going to attempt in the committee to refrain from publicizing whatever might be of interest to the news media in this report.

I think that becomes a burdensome task, and I would not want to be accused by the Department of leaking vital information to the news media.

I just wanted to bring this out publicly because I think the information will become available to the public and I would not want the committee to feel that it is in a position to have to guard this as secret information.

The CHAIRMAN. Can counsel advise us about this?

Mr. MOOS. Mr. Chairman, I contacted the investigative unit of the Department of Agriculture, and they said that they felt that there would be no restrictions in the release of that information.

Mr. MELCHER. Thank you.

The CHAIRMAN. Thank you.

Mr. VIGORITO. Does anyone happen to know what the Senate is doing on this subject?

The CHAIRMAN. The Senate has reported and passed Senate Joint Resolution 88, which deals with both temporary and more permanent changes in the law; but it has indicated that it does not wish to proceed on final grain inspection legislation until the General Accounting Office has concluded its investigation.

The tentative date for that is February 15; and until the Senate, which is conducting its own investigation, has concluded its work, we will not be able to report a bill.

It was my hope that we might order a bill reported from the committee and then await floor action in the next session. Ultimately we would relate that legislation to whatever action the Senate might take.

Mr. VIGORITO. Then, Mr. Chairman, I think that reinforces the point that we should not have further deliberation on this bill until after the holidays.

The CHAIRMAN. I think one further problem is this; the leadership wants to attempt to move on the calendar by going in at 10 o'clock every morning. Even if we get permission to sit, there will be quorum calls and rollcalls which will interrupt the committee's consideration.

Mr. BERGLAND. Does the committee need to take an affirmative action to postpone consideration, or can the chair do this on his own?

The CHAIRMAN. The Chair can do that on its own. But I wanted to obtain a consensus of the committee before doing so. That is why I brought it up.

Mr. JONES of North Carolina. Mr. Chairman, I move that we postpone action on this bill until the second session.

The CHAIRMAN. The gentleman from North Carolina moves to postpone action on grain inspection legislation until resumption of the committee sitting in the second session of the Congress.

Is there any further discussion?

All those in favor of the motion of the gentleman from North Carolina, say aye.

Those opposed?

Mr. GRASSLEY. I would like to ask for a rollcall on that.

The CHAIRMAN. The gentleman from Iowa asks for the ayes and nays.

The clerk will call the roll.

[The rollcall follows: Ayes: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Breckinridge, Baldus, Krebs, Bedell, Jenrette, Sebelius, Symms, and Foley.]

[Nays: Representatives Harkin, Fithian, Thone, and Grassley.]

The CLERK. There were 15 yeas and 4 nays.

The CHAIRMAN. There being 15 yeas and 4 nays, the motion of the gentleman from North Carolina is agreed to.

The Chair will schedule a meeting for further consideration of the bill during the second session.

Before the meeting adjourns, the Chair would like to make one or two announcements.

We are advised that the rice legislation will be on the floor today as the third item of business and will probably be up about 1 o'clock this afternoon.

Second, we will attempt to schedule tomorrow a meeting with the food stamp study group, probably about 10 o'clock in the morning in a room in the Capitol. It will meet following the first quorum call.

Members of that study group will be further advised when we obtain the information as to where we will be able to meet.

The committee has one more meeting scheduled, and it may convene at 9 o'clock instead of 10 depending on the schedule of the House. This is a full committee session next Tuesday, the 16th, to hear Secretary Butz.

Mr. HIGHTOWER. I ask unanimous consent that I be counted present and voting aye.

Mr. POAGE. I will not object to this particular incident, but I want to serve notice on this having members recorded present and voting who were not present.

You can't get a quorum if you are going to count the people who come in 5 minutes after you have called the roll. This proposition of counting them after they have appeared just means that folks won't come for the first two times, and they will answer on the third rollcall. You are going to get into the ridiculous situation of calling the roll five times.

I raise no objection to this because I know that we have been doing it. I just want to serve notice that I am not going to sit by here and see all of the rules broken down.

The CHAIRMAN. With that prescription and hearing no objection, the gentleman from Texas, Mr. Hightower, will be recorded as voting in the affirmative.

Warning is served.

Mr. HIGHTOWER. Let the record show that I was here for the earlier rollcall.

Mr. THONE. Mr. Chairman, I don't want any affirmative action on the part of the committee at this time.

Iowa Beef Processor, the biggest packer in America, has been in the news recently. I am sure most of the members are aware of what is happening.

I am tremendously concerned about the payoffs that have been occurring. This is in reference to getting meat products to metropolitan markets.

I have my staff doing quite a bit of work on this currently. We will be meeting with more officials. The packers and stockyard officials are currently auditing the firm which is in my district.

When we reconvene in January, I hope that we will have several requests from this committee in the way of investigations or whatever

because I think this is an intolerable situation which Government has to look at.

There have been payoffs and indictments that account for millions of dollars, and the consumers and producers are getting ripped off. I think it is something that this committee ought to be very serious about.

The CHAIRMAN. The gentleman will bring the matter up again in the second session.

Mr. THONE. Yes.

The CHAIRMAN. If there is no further business, the committee will stand adjourned, and the meeting tomorrow will be canceled. The committee will meet next Tuesday, December 16, to hear Secretary Earl Butz.

[Whereupon at 9:35 a.m. the committee adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976 (GAO Briefing)

THURSDAY, FEBRUARY 19, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 8:20 a.m. in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Jones of Tennessee, Melcher, Richmond, Nolan, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, D'Amours, Wampler, Sebelius, Findley, and Thone.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; Gene Moos, staff analyst; Steve Pringle, John M. Lindley, Howard Yourman, Glenda Temple, and Susan Bell, staff assistants; James A. Culver, staff consultant, Subcommittee on Dairy and Poultry; Weldon Barton, staff consultant, Subcommittee on Domestic Marketing and Consumer Relations; Leighton Lang, staff consultant, Subcommittee on Oilseeds and Rice; Alan Gray, staff consultant, Subcommittee on Livestock and Grains.

Mr. POAGE (acting chairman). The committee will be in order.

We are pleased this morning to have several representatives of the GAO here to give us some information about what they are doing in the Resources and Economic Development Division.

Mr. Eschwege, we would like for you to introduce your associates and make such statements as you see fit. Then we can introduce our discussion.

STATEMENT OF HENRY ESCHWEGE, DIRECTOR, RESOURCES AND ECONOMIC DEVELOPMENT DIVISION, GENRAL ACCOUNTING OFFICE

Mr. ESCHWEGE. Thank you, Mr. Chairman.

I would like to introduce Mr. Gerry Kelly who is the supervisory auditor in charge of the work that we did within the United States.

On my immediate left is Mr. Richard Woods who is an associate director in our division. Mr. Max Hirschhorn is a deputy director of our division. And Mr. Douglas Hogan is the assistant director who handled the task force on this assignment.

Mr. Chairman, we do not have a formal statement. As we understand it, this is characterized as a briefing, and we are here primarily to respond to questions which may be put to us.

I want to briefly mention, with your permission, that we undertook this review at the request of this committee and the Senate committee. It was a very comprehensive review, taking us about 7 months and included visits to many locations within the United States, as well as to nine importing countries and Canada.

We held extensive interviews, sent out questionnaires to solicit replies from inspection agencies, farmers, trade associations, grain dealers, and so forth.

Briefly let me mention what is in our report which we submitted to you on February 12, 1976. We have several items dealing with problems that we feel need attention at this time by the Congress and the Department of Agriculture in order to eliminate the conflict of interest situation, to improve grain sampling techniques, to strengthen controls and supervision over grain weighing, and to improve the uniformity and accuracy in grading; also to avoid some of the duplicative inspections which have been made under the present system; and to alleviate some of the problems with stowage examinations; and also the questionable use of official inspection certificates from ports; the problems of personnel administration under the inspection system; and the limited effectiveness of the Agricultural Marketing Service's administration and supervision.

The report contains numerous comments from foreign importers. It makes some recommendations for improvements needed in the Department of Agriculture's handling of foreign complaints.

We come down now to our recommendations.

The principal one is that we need to take rather drastic action in order to bring integrity into the grain inspection system.

Some of these changes can be effected immediately. Others although we feel they are urgently needed now, will, for practical reasons, take longer.

Our principal recommendations are categorized in three phases. The first one is the immediate phase or phase 1 whereby Agriculture will require the authority to take over those inspection services from the States and firms where serious problems have already been disclosed. Agriculture agrees with this.

Also we feel that Agriculture needs to intensify its surveillance over ongoing inspection services being provided by the States, boards of trade, and private agencies until the second and third phases can be implemented.

The second phase, then, would authorize and direct Agriculture to assume responsibility at the earliest possible date for providing inspection services—sampling, grading, and weighing—and for issuing official inspection certificates at all port elevators.

The final phase would authorize and direct Agriculture to extend the Federal inspection system, including sampling, grading, and weighing, to the main inland terminals after sufficient experience has been obtained at the ports.

It would also direct Agriculture to provide inspection services on a request basis under a contracting or licensing arrangement at minor inland terminals and country elevators.

Such services should be provided under Agriculture-prescribed standards and procedures and should be subject to departmental review and supervision.

These, in essence, are the major recommendations of our report.

I do not know that I need to go into it any further. I think you all have the report before you. We are here to answer your questions.

Mr. POAGE. We thank you very much, both for your review of this and the report which you have furnished the committee.

I think the opportunity to discuss these things is helpful. I have listened to a great deal of the testimony. I have read some statements. But I still don't understand what we are really trying to do with our grade inspection.

That may be a terrible admission, but I don't understand what the United States is trying to do. I do understand, of course, the obligation which the Federal Government has under the Constitution. We do have a proper function in establishing measures and standards. I understand the desirability of establishing grain standards. I understand the necessity for the Federal Government to establish those standards.

And, I understand the necessity for the Federal Government to provide some forum which will determine whether certain grains meet a certain standard or not. There has to be some body which will pass upon these things. I understand the necessity of our Federal service providing that decisionmaking.

And, I can understand the desirability of having at least some governmental agency—whether Federal or local—to make the determinations at the inland elevators. It expedites trade. I can understand how it enables us to move things more expeditiously.

But when we get to the export port, then what obligation do we have and whom are we trying to help when the Federal Government provides somebody to determine the standard? For whose benefit is that conducted?

I would like to have you discuss that with me.

What is the purpose of the Federal Government saying that this grain, which is being loaded, is a certain grade? Who are you helping?

Mr. ESCHWEGE. I know that my colleagues will want to join in on this.

I think that we are helping our own grain trade when we establish these kinds of standards.

Mr. POAGE. I understand that. I prefaced my statement by saying that I understand the usefulness and desirability of an inland service, but I am asking for whose benefit is this service conducted at the ports?

Mr. ESCHWEGE. I think the service is conducted both for the benefit of the exporters as well as the foreign importers.

Based upon our discussions with the importers there have been many complaints that, without some integrity built into the system, the minute they have a chance to go elsewhere to buy some of this grain; they will go to other countries because they have at times been disappointed with the quality of the grain that was actually received when they compared it with the quality shown on the inspection certificate.

Mr. POAGE. I think that is one of the greatest weaknesses in the whole thing. I know that you don't do it so that anybody can sue

but, in effect, the U.S. Government guarantees the quality and the quantity of the grain which is exported.

I know that legally you are not guaranteeing it, but for practical purposes the world looks upon this stamp as the guarantee of the U.S. Government.

When he does not get what he feels he should get, then he says that the U.S. Government is defrauding him. He does not say that Cargill is defrauding him.

Why should the United States assume that obligation?

Mr. HIRSCHHORN. Under the law——

Mr. POAGE. I know the law. We make the law. We are talking about changing the law right now.

Under the Constitution this is a part of the Agency that changes the law.

Why should we maintain a program that requires the Government to, in effect, guarantee the quality of this grain?

Mr. HIRSCHHORN. Mr. Chairman, you could eliminate the Federal Government entirely if you wished.

Mr. POAGE. Why should we not do just that?

Mr. HIRSCHHORN. However, we have a system established now of standards which are acceptable throughout the world. It helps the commerce in our country. Being able to send this grain all over the world has become an important element in our balance of payments and to the people of the United States.

Mr. POAGE. Mr. Eschwege just told us that these buyers, or at least many of them, were telling us that if they could find the grain elsewhere, they would go get it somewhere else because they do not get that assurance from the United States.

Mr. HIRSCHHORN. They would like to get that assurance. They told us that many times.

Mr. POAGE. Yes, they would like to get it, but ever since I have been on the committee—and that has been nearly 40 years—we have been hearing, not necessarily about scandals of the kind that we have had during the last 2 years, but we have been hearing that American grain was so oftentimes inferior.

I have been in some foreign ports and seen some of the stuff come out in American ships. It did not look like it was very good.

I am not saying that there was any collusion or anything wrong in the operation in the United States—except that the Government was accepting the responsibility for something it had no business accepting responsibility for.

I sell my calf to Swift & Co. The U.S. Government does not guarantee that that calf is choice.

Why should the U.S. Government guarantee that this grain is No. 2 or No. 1?

Mr. WOODS. Mr. Chairman, I think that there may be a misunderstanding here.

The inspection certificates do not guarantee——

Mr. POAGE. I know nobody can sue you, but for practical purposes when the United States says that this is so and so, then the buyer goes out and says that the United States represented it as being good grain; and it was not.

Mr. WOODS. The same is true with a whole variety of commodities: meat, cotton——

Mr. POAGE. It is not true with cotton.

Sure, it is a lot easier to grade cotton. Well, it is not easier to grade cotton in the first place because that is a difficult situation; but once you have the grade established, they cannot change it on you.

The bale of cotton remains the same.

The grain and the fungibles are all mixed. The cotton bale is not mixed.

Once it is baled, you cut a sample and the U.S. Government grader grades it. But when it is sold abroad, that foreign buyer does not rely on that Government grade. He cuts another sample, and he looks at it again.

Don't tell me that cotton and wheat are sold in the same manner because they are not. That cotton buyer—I have often criticized the detail that they went into, but they take a sample out of each bale. They look at it themselves.

Sure, they make a contract. They make a contract based upon Government grades. They are going to buy $1\frac{1}{8}$ inches of stripped Midland, and they are going to pay such and such an amount for it. When they get it, the sample shows that they have not gotten $1\frac{1}{8}$ inches—but that they have $1\frac{1}{16}$ inches.

They find that they don't have stripped Midland. They have Midland.

There are tables of conversion which account for the difference. All they do is to discount that cotton by that difference.

They take something other than what they bought oftentimes, but they discounted it or—in the rare instances that it would go above—they would go up with it.

They don't rely on the Government grade. Although the Government grade in cotton is a much more accurate and lasting thing than it is in wheat, you cannot make it last in wheat. It can be mixed up so easily. The cotton cannot.

Cotton does not move the same way that wheat does. The foreign buyer relies on his own judgment or his agent's judgment. He really relies on his agent's judgment.

Why should not the foreign buyers of grain rely on their own agents? Why should we not simply make facilities available to the ports for anybody who is buying this grain and let him do his own sampling as it comes through?

Mr. ESCHWEGE. Mr. Chairman. I can say that there is a certain amount of prestige involved with the U.S. dealer selling quality goods to foreign countries.

There is also the other question when some of these grain shipments are forwarded under assistance programs, such as Public Law 480, where the Government, not only provides the initial inspection but also the financing.

In those cases certainly the Government needs to know what the grade is in order not to over or under finance the shipments.

Mr. POAGE. Well, you are saying that the country should not look a gift horse in the mouth. You are saying that we should maintain the inspection service in order to see that they get what we promised.

Mr. ESCHWEGE. In the case of Public Law 480 they are paying some of it in foreign currency, and the exporters are getting dollars from the U.S. Government. We are trying to make sure that the exporters get the right amount of financing from the Federal Government in that particular instance.

Mr. POAGE. I still don't understand why the U.S. Government should carry this on, but maybe some other members of the committee understand it better than I do.

Mr. Wampler?

Mr. WAMPLER. Gentlemen, I want to thank each one of you for coming here, particularly at this early hour, to give us the benefit of your knowledge.

During the January recess of Congress, four of my colleagues spent 3 days in New Orleans with me. This was in an effort to better acquaint ourselves with the scope of this problem. I must say candidly that it was extremely helpful for me, coming from the part of Virginia that I come from, as I was not as familiar with many of the problems and the techniques and the terminology in moving large quantities of grain.

Nonetheless I am deeply concerned about the integrity of the grain inspection system.

I would just tell you that after having spent the better part of a day with Mr. Gallinghouse, the U.S. Attorney in New Orleans, and his associates—and a representative of the FBI and the Department of Agriculture—I think that one would have to simply conclude that the situation in the New Orleans area is extremely serious.

I hope that this is not widespread throughout the country. There is some suggestion that it might be spread around the country.

I think in a way it has been unfortunate that a great deal of the publicity, as it pertains to the irregularities, have focused upon the Port of New Orleans when technically speaking it did not occur there but basically around New Orleans.

We also had the opportunity to meet with representatives of the New Orleans Board of Trade which has been performing the inspection there for many years and for the most part quite adequately.

There are some obviously inherent problems in the system, namely conflict of interest. I am not sure how you get that out, except that the New Orleans Board of Trade moved in a positive way when there were members of their board who had had some indirect and direct interest in the grain trade.

They were asked to resign from the board. They did that.

I think that the New Orleans Board of Trade took some positive steps long before the indictments came out. This was 2 or 3 years ago, and it was to insure the integrity of the system.

These men, for the most part, are experienced citizens whose main interest is the development of export trade in the Greater New Orleans area as a proper function of what a chamber of commerce would do.

I have not had the opportunity to thoroughly study your report. I have had a chance to read it hurriedly.

What bothers me is this. I am not convinced at this point in time that the complete federalization of this system is automatically going to insure us the integrity that we want.

What makes you think that just the fact that we give the Federal Government the jurisdiction will eliminate these conflicts of interest and fraud that have occurred under the existing system?

Mr. ESCHWEGE. Mr. Wampler, we of course are not 100 percent sure that the Federal system will cure all of the ills which are present in the system as it is now. We do feel that the present system is a hodge-podge of different inspection agencies.

As you have already mentioned, some are boards of trade, others are private companies; and some are States.

As you probably know, there has been a recent indictment of one of the State agencies down there also.

We went further than just the ports, even though that is where the indictments have been made. We investigated inland as well. We asked a lot of farmers and operators what they thought about the problem.

Again and again we heard great dissatisfaction expressed about the grades which are being established for the grain.

We felt very strongly that one of the problems was that there were so many divergent groups. Because of this you cannot bring uniformity into the system with regard to such matters as guidelines and hiring practices. Also, it is difficult to have complete independence from the grain companies and boards of trade.

We felt that the only way you could bring integrity into the system would be to completely divorce it from the commercial trade. It is because of that that we have recommended a federalized system.

We are not advocating it everywhere. We are just saying that it should be at the ports and at the major inland terminals.

It will cover the bulk of the grain shipments.

Mr. WAMPLER. Is not this going to be a slap in the face to those States and private agencies that have done a good job through the years, such as in my State of Virginia?

At the Hampton Roads area in Virginia, so far as I know there has never been any fraud. This precludes them from continuing, does it not?

Mr. ESCHWEGE. There will be some States which will continue to participate even under our proposed system because we are not extending it to the country elevators and the minor inland terminals.

I think that our problem is one of not knowing what is going on inland completely because the concentration of criminal investigations has been on the ports.

We are not the ones to pursue criminal matters so we really don't know about that, but we have looked at the procedures and we find that they are generally weak throughout the country.

Mr. WAMPLER. What you are proposing, for example, is that the Hampton Roads point would be federalized, is that correct?

Mr. WOODS. Yes.

Mr. WAMPLER. That is in spite of the fact that Virginia and other States have done a good job; so one or two States will affect the rest, is that correct?

Mr. ESCHWEGE. I think that there will be some States which will have to relinquish their services even though they have done a fairly good job. But I think what we are looking for procedurally is the uniformity that I mentioned earlier.

For example, we would like to see inspectors rotated.

This is how some of the problems arose, as you know. We don't like to see one inspector working at a particular elevator for 10 or 15 years. Obviously, his outlook on things will change during that time.

Mr. WAMPLER. I think that the Department of Agriculture must bear some of the blame. Whether we in the Congress have given them adequate resources and personnel, I am not sure. It would appear that we would both share the blame.

I am disturbed about this. I really believe in the free enterprise system. There is an apparent lack of concern on the part of the major grain companies in moving effectively, once these practices became well known and particularly when the indictments were issued. It seems to me that they should have moved forthwith in a positive way to cure the problem or to suggest ways of improving it.

As far as I know, they have not expressed that publicly.

Have you talked to the major grain exporters?

Mr. ESCHWEGE. Yes.

Mr. WAMPLER. What was their attitude?

Mr. KELLY. We have had some mixed reactions.

We have been told by some members of the grain trade that they would favor an all-federal system, and, in other cases, they have told us that they do not favor it. I do not think we have an overall consensus of just what their feeling is.

Mr. ESCHWEGE. Let me say one more thing about this.

There are many inspectors out there who are trying to do their best to do an honest job.

I foresee that, under a federal system, many of these good inspectors would be recruited into the federal system. They would not have to fear being out of a job.

Mr. WAMPLER. I recall particularly a conversation with Mr. Gallinghouse who said, as part of the plea bargaining, the Bunge's elevator, I think it was, was substantially involved in irregularities, and a positive action program was agreed upon as a part of the plea bargaining process. Certain steps have been taken and are now being implemented in-house at that particular elevator to correct a lot of the abuses.

We had an opportunity to see that some of the scales were being sealed. Possible points of diverting grain in and out of the house were being controlled so that the delicate selector could not be manipulated as apparently it was at one time when they were getting a sampling of grain.

As I say, I just remain unconvinced that the complete federalization is going to give the system the integrity that we would like for it to have. I am not sure that I know what the answer is, but I appreciate your coming this morning and making yourself available to us.

Mr. POAGE. Thank you, Mr. Wampler.

Mr. Hightower?

Mr. HIGHTOWER. I do not understand the comment about the necessity for uniformity.

I can understand the necessity for uniformity as far as standards and procedures are concerned. But you referred to uniform hiring practices. Are you going to try to have some kind of super mode to determine just exactly what the hiring practices ought to be in all parts of the country?

What do hiring practices have to do with it? What is the necessity for having uniformity?

Mr. ESCHWEGE. I suppose one way to explain that would be to use a better term—to talk in terms of the qualifications of the individuals to perform the sampling and grading.

Mr. HIGHTOWER. All right.

Are you going to impose these qualifications prior to hiring rather than look at their performance to see whether they are performing satisfactorily?

Mr. ESCHWEGE. I would do it both ways.

Mr. HIGHTOWER. Is not the real test in the performance rather than what standards they might have met prior to being hired?

Mr. ESCHWEGE. I think it is a combination of the two. I think they need to have some minimum qualifications, but certainly by hiring people who can perform according to what the qualifications seem to indicate would be helpful.

You also have to evaluate performance.

Mr. HIGHTOWER. I think one of the great things about this country of ours is its diversity. We have not required everybody to come out of the same mold.

Procedures can be established one place that will be very effective there. In another part of the country, other procedures will be used which have been very effective there. The two things are not necessarily transferable.

That is part of the Federal system. We have States that have different approaches. One approach in Texas will work very well, where it may not work in Minnesota. I think if we get into the type of thinking that everything has to be uniform, and that if we are going to have uniformity in such things as hiring practices, then that is very disturbing.

Another comment that you made that bothers me somewhat is this. Perhaps I am wrong. I would like for you to explain it.

You spoke about the necessity to transfer someone around all the time and to keep rotating him. What is the reason for that?

Mr. ESCHWEGE. Our report is full of examples of where there have been irregularities because of the close relationship of the inspector with the grain company or terminal where he was grading.

Our thought on this is that the longer the individual stays at a particular location and associates day after day with the same people, then the more likely it will be that he will become lax in the manner in which he goes about his work. He may even be susceptible to bribery.

Mr. HIGHTOWER. Has that been the experience, or is that just a theory?

Mr. ESCHWEGE. No; there are cases which we highlight in the report. This has happened.

Also, I think this is not the only place that this is being advocated. This happens in the meat inspection program. Meat inspectors do get rotated.

Mr. HIGHTOWER. They could be in error, also.

The thing about it is this. In my opinion, if someone is susceptible to bribery, moving them around is not going to improve their morality.

Mr. ESCHWEGE. I think what we are saying is this. Initially, he may not be susceptible. But if you keep him long enough in one place, he might be susceptible.

I am not sure that this is analogous, but we are part of the legislative branch and we do not keep our auditors in the same executive departments all the time. We are not concerned about bribery, but we are concerned that they get a fresh look at things in the departments and agencies.

So, from time to time, we rotate our people simply to give someone else a chance to look at a particular situation in a different light.

Mr. HIGHTOWER. Of course, in your responsibilities you make some quality judgments that would not be applicable to grain inspection. The grain is either there and it is a certain grade, or not.

They go through the mechanical tests, and they either meet the tests or they do not.

I am not sure that is analogous.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Melcher?

Mr. MELCHER. I am quite encouraged by the scope and depth of the report.

I think it is extremely helpful for this committee and the Congress in drafting the proposed legislation.

In page 3, X, of your digest, and again on page 45, you mention a system on a reimbursable basis whereby the fair cost of operating the system would be recovered through fees.

Have you arrived at what those fees might be?

Mr. Woods. No; we have not come up with a schedule of fees. Our concept, with which the Department agrees, is that the system should be reimbursable.

In its comments to us, the Department states it wants to exclude certain costs. These are minor items, however, having to do with research and certain other matters.

But we are in agreement with the Department that it should be a reimbursable system.

Mr. MELCHER. Perhaps the Department has some concept of what is fair, that is, an amount that would be reimbursable.

Mr. Woods. We know what it costs now roughly per bushel to perform this service. We know what it costs in Canada. We have some idea as to what the increase would be as a result of incorporating weighing into the inspection system.

Mr. MELCHER. You recommended that the weighing be federalized.

I assume that this would be covered by user fees, also.

Mr. ESCHWEGE. Yes; it would be, and it would increase fees some because of that.

Mr. MELCHER. You have given some consideration to this, or are you referring to the Department and their expertise on this?

Mr. ESCHWEGE. We do not have a figure as to how much more the weighing would cost. No; we do not.

Mr. MELCHER. On pages 61 and 62, you make a couple of points and conclusions.

It seems to be very damning of the Department's attention to foreign complaints.

Have you followed, in your study, some of these complaints through the channels—that is, from their origin in the foreign country to the Department to see what happened afterward? How did this work?

Mr. HOGAN. Yes; we did follow a number of them through. We found that the procedures and the whole system of handling foreign complaints was somewhat deficient. In most cases, they really are not doing anything or providing any useful information to the foreign buyers which would assist them in resolving their complaints with the U.S. exporters.

As a matter of fact, most of the foreign buyers did not come to the Department when they had a problem with U.S. grain.

Mr. MELCHER. What is the system?

If a foreign buyer in Amsterdam complained about some corn or soybeans, did he have somebody in Amsterdam to complain to?

Mr. HOGAN. The agricultural attaché in Amsterdam would take the complaint from the foreign buyer and forward it into the Foreign Agricultural Service in the Department and then it would be referred on to the Agricultural Marketing Service or Grain Division of the Agricultural Marketing Service, if it involved the quality of grain.

Mr. MELCHER. What about short weights?

Mr. HOGAN. On short weights, it would go to the transportation and warehouse division. As a general rule that is the case, but in a lot of cases, I understand, it is not forwarded to that division because it really has no responsibility—overall responsibility—for supervising the weighing of grain.

Mr. MELCHER. I was one of the members of the group that went to New Orleans in January. We were told by a Department employee who worked with the Marketing Service, who had spent about 6 weeks last fall in Amsterdam, that there were plenty of complaints against American grain.

He said the common complaint was short weight.

If those buyers protested, then they did it to the agricultural attaché who in turn passed it on to the Foreign Agricultural Service within the Department, and they, in turn, were supposed to pass it on to the warehouse. Is that correct?

Mr. HOGAN. Yes, sir.

However, the situation we found is that foreign buyers do not always come to the Department. There is nothing the Department can do for them, or it has not been doing anything for them. So, in most cases, they do not file a complaint with the Department.

Mr. MELCHER. I am interested in what your study showed and in the complaints you filed where it broke down. Did it end at the Foreign Agricultural Service? Did they shelve it?

Mr. HOGAN. No, sir. They were generally referred on to the Agricultural Marketing Service.

Mr. MELCHER. On weighing, it went to a different group.

Mr. HOGAN. The transportation and warehouse division. Some were referred to them, but in other cases they were not.

I understand that since July 1975 all of the complaints about short weights, according to the transportation and warehouse division people, have been referred to the office of investigation. That division has not been involved in following up on shortweight complaints.

Mr. MELCHER. Somehow, after the complaint was lodged to the attaché and then transmitted to the Foreign Agricultural Service, it died. Is that correct?

Mr. HOGAN. No, sir.

It went to AMS.

Mr. MELCHER. I am talking about short weights.

Mr. HOGAN. Oh, I see.

Mr. MELCHER. That was the most common complaint, by far. I am only talking about short weights.

Mr. HOGAN. Generally there would be a response. In some cases, FAS would prepare a response to be forwarded to the agricultural attaché in the country involved. Then he would respond to the foreign buyer.

Mr. MELCHER. Transportation and warehouse is supposed to handle short weights and go back to the company that short-weighted. It seems to me that it bogged down there, and it did not go back.

Obviously the Department's responsibility is here. Is it not their responsibility to go back to the company?

Mr. ESCHWEGE. This is covered in our report on pages 78 and 79. It may be a different page in your copy. It is very short and I might read it because it might be of interest.

On complaints about short weights, the Agricultural Marketing Service can do very little to assist foreign buyers in resolving disputes with U.S. exporters because it has no responsibility for supervising or controlling the weighing of export of grain. In responding to a short weight complaint, an AMS official told FAS that, if the export elevator involved had been licensed under the U.S. warehouse act, AMS's only responsibility would have involved the fact that it had licensed the weigher under the act.

He added that

(1) AMS was not able to determine the accuracy of the weight of any particular shipment, (2) there was no appeal system under the act, and (3) settlement was between the buyer and seller and might ultimately have to be settled in a court of law.

So, AMS has a very limited ability to do anything about short weights.

Mr. MELCHER. I gathered that when the Foreign Agricultural Service did not report it to AMS in the transportation and warehouse division.

Then it seems that Agriculture had no means or way of really following through and cracking down on the grain company that short-weighted a foreign customer.

Is that correct?

Mr. HOGAN. This is correct under the present system.

Mr. MELCHER. We can blame the Department or Congress, or all of us collectively, but we ought to correct it.

Mr. HIRSCHORN. This is one of the reasons why we are recommending that certifying the weight be included under the system.

Mr. MELCHER. I think your point is absolutely well made and well documented by your report.

Thank you very much.

The CHAIRMAN. Mr. Thone?

Mr. THONE. Thank you, Mr. Chairman.

I, too, want to thank you people for this comprehensive report which we have been reviewing. We have been looking forward to it for a long time.

It is essential that we restore the integrity of the inspection system so far as national grain is concerned.

I also agree that we have to promote the orderly marketing system here more than we have. Obviously we want to protect the buyer and seller's right, and we want to build confidence in the quality and consistency of the U.S. grain within world markets.

I noticed in summary that you found that the current inspection system operates without effective controls and tolerates conflicts of interest between the grain inspection and merchandising operations and is unresponsive to Federal supervision.

Within the last week, the Department, of course, has proposed stronger controls over grain inspection. I am sure you are quite familiar with these new rules that they propose.

It is my understanding that they are now going to have a public hearing on these on March 4 for implementation shortly thereafter.

My first question is this. I do not know to whom it should be directed.

Do these 12 or so changes in rules and regulations come some way in assisting you in what you recommend should follow in phase 1?

Mr. ESCHWEGE. They certainly help. But we are not convinced that these will do the job of putting integrity back into the system.

Mr. THONE. Specifically, where are they deficient to implement phase 1?

Mr. ESCHWEGE. If you are talking about the affirmative action proposal, which is part of this, I believe, it is a voluntary proposal.

Mr. THONE. It is a voluntary proposal, but I understand that once it is implemented it has real teeth.

Is this correct?

Mr. ESCHWEGE. We have had only a few days to look at it.

Mr. THONE. Frankly, I am under the same disadvantage with your report which I intend to take home and study this weekend. It looks like an excellent report.

Mr. ESCHWEGE. Our lawyers have not come to a final decision, but their first reaction was that there is a serious doubt that this could be legally enforceable as a document. In other words, if a particular grain company violates the provisions of the affirmative action agreement, we question seriously whether the Department of Agriculture has any legal recourse against them.

Mr. THONE. Mr. Kelly, you indicated that one or so of the major exporters did agree that perhaps the all-Federal system was advisable.

Would you be willing to designate who those companies—or that company—might be?

Mr. KELLY. As a matter of fact, the ones that I had in mind asked us not to divulge their names. They told us that in privacy. For proprietary purposes, they did not want it generally known.

Mr. THONE. I will not carry that along.

But, specifically, were these companies who were exclusively in export market at the gulf ports, perhaps?

Mr. KELLY. I would not say exclusively, no. They dealt elsewhere.

Mr. THONE. But primarily at that level?

Mr. KELLY. At least in one case it was at that level, yes.

Mr. THONE. That is understandable.

Again, I did not know to whom I should address this question, but how would the State agencies survive if we adopted your proposals? How would they then be funded?

Would there be any money at all for them to carry on their operations?

Mr. HIRSCHHORN. The State agencies under our proposal would be phased out. They would be phased out at the ports and at the major inland terminals.

They would still exist at the smaller locations throughout the country.

As far as financing is concerned, it is my understanding that they are financed by fees for the service they perform from the people who sell the grain.

Mr. THONE. I do not have much time, but I would like to develop that further and maybe I can follow up later on on that. Mr. Eschwege, did you estimate the cost for the total federalization?

Suppose phases 1, 2, and 3 were fully implemented in that you are now adding weighing. As I recall, when Assistant Secretary Feltner was here, when you federalize the inspection portion, he suggested that the cost would be \$60 million and you would have to add at least 3,000 or so new employees.

I am inclined to think that maybe the Federal Government must get into this weighing aspect after some of the investigation that we have made, including our trip down to New Orleans.

Do you have an estimate now as to what kind of figure you are talking about dollarwise?

Mr. ESCHWEGE. We have some estimates. We indicated in our report, however, that a lot of details would have to be worked out in these matters such as the organization, the inspection and weighing standards, the fees to be collected, and so on.

The present inspection system, at the major ports and the major terminals, requires about 2,100 people.

Our proposal—and again this is a rough estimate—would also include weighing and would require about 3,000 people.

So, on that basis, roughly \$60 million would be about right. I hasten to add that we hope that most of this money would be recovered through fees collected from the grain companies.

Mr. THONE. But this is what troubles me just a little in this picture.

I know we have a difference of opinion, even on this committee.

Most of that money eventually is going to come out of that producer and that grain farmer out in my country, is it not? It couldn't be any other way, could it?

Mr. ESCHWEGE. It is the consumer.

Mr. THONE. I do not know how you are defining consumer, but the producer of the wheat, the corn, and soybeans really pays it, doesn't he?

Mr. HIRSCHHORN. Yes; eventually all costs are borne by the ultimate consumer.

There would be an increase in the fee. We do not know what kind of fee structure would be established, but there would be an additional cost, there is no doubt about it.

However, we feel that the main increase in the cost would be due to our recommendation to include the weighing operation.

We feel that the weighing operation is very important. That is why we are recommending it.

Mr. THONE. I am inclined to agree with you.

I have one more question or so, Mr. Chairman, if I may. Let me get this clear in my mind.

As I understand it, we have 8,000 of the country elevators. That is where about 80 percent of the grain initially is deposited by the farmers.

Then there are 450 of the so-called inland terminals, and ultimately we get to the 80 port elevators.

I think these are the figures out of your report.

Under your proposals, suppose we would go all the way, that is, all federalization and implemented all three phases: What extra Federal involvement of any sort would there be at these 8,000 country elevators where 80 percent or more of the grain is originally delivered?

Mr. KELLY. According to the way we have conceived it, there would be a status quo at that level. There would be no change of any consequence.

Mr. ESCHWEGE. In other words, the country elevators would not be affected. There would be no change there. There would be no change at the minor inland terminals. We are talking only about major inland terminals which handle 50 million bushels of grain or more, annually.

Of course, all port elevators would be covered.

Mr. THONE. Thank you, Mr. Chairman. I think that takes care of it for me. I think I have taken more than my share of time.

The CHAIRMAN. Mr. de la Garza?

Mr. DE LA GARZA. Thank you, Mr. Chairman.

I address this question to whoever would like to respond.

I have the same problem of not having had too much time to read the report.

Was there any study made as to whether we needed an inspection system or not? Or did you begin solely with what is wrong with what we have?

Mr. HOGAN. I do not think so. I think that would be more of a matter for the Congress to decide.

From the standpoint of the Grain Standards Act, which does require the inspection of grain, I think Congress would have to decide.

Mr. DE LA GARZA. You did not go into that at all?

Mr. HOGAN. Not per se, but it would certainly seem that the inspection function is useful to the trade so that you do not have, or should not have, to take a look at samples of grain to determine whether or not it is of the quality that you ought to buy.

It is generally sold by grade and, under the standards you have certain factors such as moisture content, and so on.

Mr. DE LA GARZA. Did anyone in the trade tell you that they wanted to sell it among themselves and that you should leave them alone?

Mr. HOGAN. No, sir.

Mr. DE LA GARZA. This would apply to any foreign buyer?

Mr. HIRSCHHORN. The foreign buyers we interviewed pretty much believed in the system and felt that it was a good system, but they said they would like to get what the certificate calls for.

They think it is a very good system, as far as they are concerned, if it would only have credibility to it.

Mr. DE LA GARZA. They wanted the Government of the United States to give them a certificate guaranteeing that they got what they paid for.

Is that correct?

Mr. HIRSCHHORN. They do get a certificate now.

Mr. DE LA GARZA. But they do not necessarily get what they paid for.

Mr. HIRSCHHORN. The certificate says that they are supposed to get a certain quality, that is, no more than a certain amount of broken kernels and moisture; but they claim they are not getting what the certificate states.

Mr. DE LA GARZA. In your report, as I go through it, and from what I have heard in hearing, if every person involved had been 100 percent honest, then you would not have had any problems, would you?

Mr. ESCHWEGE. No; I would not want to say that.

As I mentioned earlier, we were not looking for criminal violations but we were not closing our eyes to it.

Mr. DE LA GARZA. No, but my question is: Are these people problems?

Mr. ESCHWEGE. We looked at the procedural aspects of it. We find that there is a great problem with the procedures which make these kinds of things possible.

Certainly there are people involved, but we do not want to make it too easy for people to circumvent the process. One way to do that is to tighten up on procedures.

Mr. HIRSCHHORN. There are also some problems with the standards themselves and some revision is needed there. We disclose that in detail in chapter 4 of our report.

Mr. DE LA GARZA. You are supposed to be an impartial agency. If everybody had been 100 percent honest, then you would not have had any problem.

Mr. ESCHWEGE. We still would have some problems with the way the procedures are laid out.

Mr. DE LA GARZA. If somebody fixed the scale or somebody cut it before they finished weighing, or somebody took and somebody added and somebody did not look.

Mr. HIRSCHHORN. If dishonesty were eliminated, it would certainly reduce the vast majority of the problems. There would, however, be some problems left.

Mr. DE LA GARZA. Then why do you say in your report that it is a sad and tragic thing that the employees had been too chummy with the companies?

Then you say it is not going to eliminate any jobs, but that you are just going to transfer them. Their loyalties were not to the USDA.

I find that every day with the meat inspection, with the citrus inspection.

I have had meat inspectors say, "The USDA and the Congress can go to hell, but I am the meat inspector." He works for the Government.

We cannot even fire that guy with all of the civil rights and equal employment business.

Mr. ESCHWEGE. Mr. Kelly wants to say something on the subject.

Mr. KELLY. There are examples other than dishonesty in our report.

For example, we relate error rates in grading in different parts of the country which we visited. In some cases, there are rather large error rates. We do not think these are necessarily due to dishonesty. They are due, perhaps, to lack of uniformity, training, supervision, management.

So there are problems like this, in addition to dishonesty, which we feel could be corrected under a single agency, rather than the existing system involving 111 agencies. We feel that under the present system it is very difficult to achieve this uniformity.

Mr. DE LA GARZA. Aside from some technical correction, I have not read it, but the newspaper report is that GAO says that Federal take-over of grain inspection will solve our problems. Is that your statement?

Mr. ESCHWEGE. No; I respectfully disagree with the newspapers on that.

I think this would lead us on to the road to a better system, however.

Mr. DE LA GARZA. All dishonesty would be eliminated under the Federal system?

Mr. ESCHWEGE. No; but it would make dishonesty more difficult.

Mr. DE LA GARZA. Can that be made by Federal supervision instead of Federal control—instead of having a Federal agency have more Federal supervision with more technical control?

Mr. ESCHWEGE. More Federal supervision would certainly help some. We are not convinced that, under the present system, even if you increased the Federal force four times, it would really help very much.

One reason we are persuaded that way is that we have had problems on and off since the 1916 act was passed. We patched it up somehow each time, but it still has not done very much in the way of returning integrity to the system.

Mr. DE LA GARZA. My time is up. Thank you.

The CHAIRMAN. I would like to recognize those members who have not yet had a chance to ask questions.

Mr. Baldus?

Mr. BALDUS. I want to compliment you on your diligence. It seems to me that your effectiveness has been apparent already.

The Department has already decided to choose some of those recommendations that you make. That is apparent. Of course, it is our choice whether or not we chose, or not, to take all of your recommendations.

I can understand some of the concerns on the part of some of the members here and their reluctance to relegate more work to the Department of Agriculture in view of the marketing services' responsiveness over the years to their own internal audits. This goes back to 1968, 1969, and 1973.

My question goes to the point. When we give them higher responsibility, and, even though they have their auditing service, which is supposed to recommend things to them: Is that going to be adequate, or would we have to go one step further to see that the Department of Agriculture will do what they say they are doing and do what they are supposed to be doing? And, if they do not have enough equipment and staff to do it, then they will make their needs apparent to us so that we can cause them to do their work?

Mr. ESCHWEGE. I quite agree that we need to be watchful of what the Department does do. They do have an internal audit system which has flushed out some of these problems. They always should receive the attention of the Department.

We, as an arm of the Congress, need to be watchful of what goes on. I know that you, as a Member of Congress, will want to keep an

eye on things and make the Secretary accountable to the committees and report back to you periodically on how well the system is working.

So, I think it is a combination. We all need to be very watchful as to what takes place if the Congress chooses to revise the system.

Mr. BALDUS. I am worried about this. We can correct the system and we will be aware of it for a year or two. Then it will go along pretty well.

Here we have examples of the Department's own internal audit saying that there are bad problems, and still nothing was done. I am talking about the Browning report.

Can you enlighten me as to why, in the light of those things, the Department would not have reacted, and what we could do to cause them to respond?

Mr. HIRSCHHORN. One of the difficulties is, that the comments related to a system's deficiencies. It is the same type of problem we may have explaining why we need a Federal system.

Both we and the Department's internal auditors found weaknesses in the system, weaknesses in the internal controls, conflicts of interest, and so on. However, nobody gets excited about it until such time as you can actually find fraud or have criminal indictments.

At that point, people start to say, "Yes, maybe you are right. Because the system is weak, these things are happening." I think this is true with the Department.

The deficiencies that were found were not of a fraudulent nature. They were weaknesses in the system, such as we are pointing out.

People usually do not get too excited about that, although they probably should.

Mr. BALDUS. It was the Department's responsibility. Even without legislative language, they can change the system considerably.

They at least had the power of revoking their license, which apparently they did not do. They fussed around with that forever.

Mr. HIRSCHHORN. They did not do a very effective job, that is true.

Mr. BALDUS. In that regard, I might agree with Mr. Wampler that some of the States have done a much better job than the Federal service has done. I guess that is why I am interested in it.

If this is more broadly federalized, then I wonder if we could develop some recurring mechanism to keep it clean.

Mr. HIRSCHHORN. I agree with you that it would be helpful to have some sort of recurrent followup or some mechanism of checking periodically.

The CHAIRMAN. The Chair wishes to apologize for the fact that we have only about 10 more minutes remaining before the full committee meets at 10 o'clock.

Unfortunately, we will have to further limit the questioning of members.

How many would like to ask questions who have not had an opportunity?

[Members raise their hands.]

The CHAIRMAN. Then we will have to limit each member to about 2½ minutes.

Mr. Harkin is recognized.

Mr. HARKIN. I was also one of the members who went down to New Orleans. It seems that what we are getting down there is a duplication of efforts. We have a duplication of facilities, to be sure, in that

we have one inspection office, and next door you have the Federal inspection office.

As I understand it, the Federal inspectors come in only on appeals. That is, only if a country appeals an inspection.

Japan, for example, right now is appealing 100 percent of their inspection. That brings in the Federal inspectors to duplicate the efforts already being made by the private inspectors.

I am just wondering if you have investigated this? I do not see anything in the report about it. Maybe I have overlooked it. But, if all the countries are now going to be exercising their right to appeal, then that means that we are going to have more inspectors anyway to duplicate the services already provided by the private sector.

Mr. ESCHWEGE. Mr. Harkin, we do make that point, that there will be some saving in this overlapping inspection. A lot of people are appealing and asking for additional inspections simply because they do not trust the system.

Mr. Kelly may want to elaborate on that and tell you more about that.

Mr. KELLY. We do have a section of the report dealing with the duplicative inspections. This is done not only on appeals, but even within the system.

When you are shipping from Iowa down to the gulf, and the grain is misgraded in Iowa and it is received in the gulf, the people at the gulf, after unloading the car and discovering the misgrading, feel that it is encumbent upon them to correct the error that occurred in Iowa.

So, consequently, we find that inspections are made at both origin and destination very frequently.

We feel that under a Federal system, many of these duplicate inspections would be avoided. In other words, it will perhaps be necessary to have only an inspection at the destination and not at both the origin point and destination.

Mr. HARKIN. I agree. If you are going to have two different systems doing what one system does, then why not have just one system?

Mr. KELLY. We do make that point in the report.

Mr. HARKIN. Let me have a followup?

Mr. Gallinghouse, the district attorney in New Orleans, stated that it was his belief that the penalties were not stringent enough. He spoke of those who were indicted and convicted.

You mention in your report on page 46 that the USDA has "certain additional authority and impose certain additional penalties."

One of the things Mr. Gallinghouse specifically mentioned was the possible provision to allow the judge the option of lifting the license of one of the grain companies in order to do business. In other words, their license by the Government would be lifted.

He said that it was suggested that, if you wanted to hit them hard, you hit them in the pocketbook.

I wonder if you have the observations on that?

This would be a possible penalty for provision.

Mr. Woods. We have not attempted to specify just what the penalty should be for the various violations. All we say in our report is that the system should prohibit conflicts of interest and should impose appropriate penalties for violations on the part of the grain handlers and inspection personnel.

We know the problems you are speaking about.

Mr. HARKIN. Bunge, for example, got convicted. They got fined \$20,000 on two counts. Twenty thousand dollars to Bunge is like 10 cents to me.

But if a license is revoked for maybe 90 days, probably that would be helpful.

Mr. WOODS. I think a more appropriate system of penalties should be devised. We think the Department is very conscious of this and is working on this, I assume, in collaboration with Mr. Gallinghouse. That is a very definite need.

Mr. HARKIN. Thank you.

The CHAIRMAN. Mr. Bedell?

Mr. BEDELL. Would it be possible for you people to furnish us information of your estimate of the cost comparison at the export points of a full Federal inspection system as compared to what we have today, which is Federal and private inspection system?

Would it also be possible for you to include in those estimates the additional cost that you estimate would be incurred if we included weighing?

The reason I asked for it is that, one of the big arguments we get from the Department is that we should not do it because of the big cost increases. And, if I read the report correctly, you question very much whether there would be a total cost increase.

Mr. ESCHWEGE. Yes; I think we can furnish this. We will have to work it up. As we point out in the report, of course, there will be a cost increase because of the weighing.

Mr. BEDELL. You would separate those for us?

Mr. HIRSCHHORN. Yes.

There would also be a cost increase because we believe there is not adequate inspection being done now. As we pointed out in various examples in the report, there has been a lot of shortcutting in the inspection process, and we believe there is a need to fix that up.

Mr. BEDELL. Would you include in your report what you think the cost would be in the present system if it were done properly—that would include this extra supervision—so we could have these comparisons?

Mr. ESCHWEGE. Yes.

Mr. BEDELL. Finally, your report indicates that foreign buyers are now buying insurance to be sure the weights are proper.

Would it be possible for the domestic supplier to buy such insurance, if he wished to do so?

Mr. KELLY. I am not aware of any practice of this type.

Mr. BEDELL. Would it be possible? I assume if the buyer could buy insurance, I presume the seller could buy insurance.

Mr. ESCHWEGE. We will research that.

Mr. BEDELL. Would you find out and let me know?

Mr. ESCHWEGE. Yes.

[The material submitted by Mr. Eschwege follows:]

INFORMATION REQUESTED BY CONGRESSMAN BERKELEY W. BEDELL
DURING GAO BRIEFING OF HOUSE AGRICULTURE COMMITTEE--FEBRUARY 19, 1976

Question: What is the correct cost of grain inspection at export locations; what is the estimated cost of grain weighing and inspection at export locations under GAO's proposal, with a separate breakdown for weighing and inspection; and what would the estimated cost be to beef up AMS supervision at export locations to a satisfactory level?

Answer :

Current cost of grain inspection at export locations

Neither we nor the Department of Agriculture have available specific financial data on the cost of grain inspection at the export locations. The Department, however, has estimated the total cost of operating the grain inspection system country-wide to be \$35.7 million, based on fiscal year 1974 activity, of which about \$15 million was applicable to export locations. These estimates were developed by applying applicable fee schedules to grain volumes subjected to inspection. The estimates appear to us to be somewhat understated in that they do not take into account certain supplementary charges frequently made to grain companies by the designated inspection agencies for such costs as overtime pay required to be paid to inspectors in certain circumstances.

Estimated costs under GAO proposal
for export locations only

We estimated the annual cost of providing Federal inspection, including weight supervision, at export locations to be about \$34 million. The

increase in cost over the present system can be attributed primarily to (1) a 50 percent increase in the number of inspectors with a related increase in supervisory personnel, and (2) the incorporation of grain weighing supervision into the inspection process.

The 50 percent increase in grain inspectors, which Department officials agreed was reasonable, is needed to assure that grain is graded in accordance with USDA regulations. At present, inspectors frequently take shortcuts in grading procedures because of understaffing.

Specific costs ^{estimates} applicable to weight supervision cannot be made because our proposal is based upon a system which combines sampling and weight supervision activities. Many of these activities can be and are performed simultaneously by the same person.

Also, our estimate does not include one-time transition costs of approximately \$2.4 million. This amount is based on USDA's estimate that it will cost \$2,000 per inspector for moving expenses and \$15,000 per laboratory for equipment.

Estimated cost to beef up INS supervision
at export levels to a satisfactory level

We do not believe it is feasible to increase Federal supervision under the present inspection system to a satisfactory level and therefore have not estimated the costs for such an increase. As stated on page 50 of our report (p. 1 of the Confidential Print):

"Grain sampling, grading, storage examinations, and other essential elements of the total grain inspection system are not now, and under the Administration's proposal could not realistically be, subjected to sufficient Federal supervision to warrant any claim that the designated agencies' inspection certificates are a product of USDA or of the U.S. Government.

"Although USDA's overall direction and supervision of the existing system have been deficient, the system's structure, the general atmosphere in which the system operates, and the almost total absence of any direct Federal role sharply limit the responsibility which can be placed with USDA for serious shortcomings. Although increased Federal supervision, more severe penalties, and more intensive and extensive investigations by USDA could contribute to more integrity in system operations, it is not feasible to increase Federal supervision to prevent circumvention of the system by persons so inclined."

Question: Is commercial insurance available to cover short weights on domestic grain transactions?

Answer : Representatives of various grain trade associations and insurance companies told us that currently there is no type of insurance available to cover short weights on domestic grain transactions. Some said that they believed the cost of providing this type of insurance coverage would be prohibitive. One insurance company representative said that his company had considered providing this type of insurance coverage but that a more detailed analysis would be required to determine the feasibility of such coverage.

The CHAIRMAN. Mr. McHugh?

Mr. McHUGH. My question relates to the procedures used by foreign buyers.

As I understand it, you have talked with foreign buyers in approximately nine countries? Is that right?

Mr. Woods. That is correct.

Mr. McHUGH. Is it your perception that anything less than the Federal plan which you propose would be seen as an inadequate response on the part of foreign purchasers by our Government to the problem which they perceive?

Mr. ESCHWEGE. This is, of course, an opinion question, and how I perceive it. I would say, yes. I think the foreign buyer, in view of all that has happened, would want to see federalized inspection.

Mr. McHUGH. Assuming that the U.S. Government does something less than what you propose, I am anxious to know what the implications of that could be. Do you have figures in your report, all of which I have not read yet, which would indicate to what extent the foreign buyers are captive of the United States in terms of grain sales?

Or, to put it another way, to what extent can they transfer their business to other countries now, and in the foreseeable future?

Mr. ESCHWEGE. We do not have that data, but we did have many conversations with foreign buyers. Throughout the conversations, they indicated that they have to buy from the United States, but that, if the opportunity arose, they would go elsewhere. In some cases, I think they indicated that they actually did go elsewhere.

Mr. HOGAN. Yes; there were about 21 out of 68 we interviewed who told us that they had reduced their purchases of U.S. grain and another 6 said they had stopped buying grain from the United States altogether.

Mr. McHUGH. Is it possible for you to provide us with data as to what extent there is a potential for transferring business?

I do not know how to couch that question precisely, but you see what I am getting at.

Mr. HOGAN. I think that would probably be extremely difficult. From what we understand, Brazil has been developing its capability for producing more soybeans.

In chapter 3 of the report, we point out that information was supplied for one country indicating that it had been diverting its purchases to other countries. Soybeans was one of those commodities.

Mr. McHUGH. Thank you very much.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. Thank you, Mr. Chairman.

I am deeply appreciative of the work that GAO has done.

I support the recommendations with the possible exception of the federalization of the system and extending it only to export terminals rather than including inland terminals. But on all other points, I am generally in agreement.

I am wondering, therefore, to followup what Mr. McHugh said, if we took something less than your total recommendation, I realize that it will be less than enthusiastically received by foreign buyers, but I am wondering what you see as procedural problems that we might get involved in if you have export terminals inspection facil-

ities federalized and the major inland terminal Federal inspection system not federalized?

Mr. KELLY. As far as procedures are concerned, I do not think this would create any large complication. It could be stopped at export or extended either way without creating any particular administrative problems.

Mr. HIRSCHHORN. I would like to point out, however, that the same type of deficiencies that were found at the ports were also found inland. That is why we recommended that the major inland terminals be included under Federal inspection.

Mr. FITHIAN. To what extent could these procedures be remedied or corrected if we write into the bill a weights section and a new grading standard, or at least mandating the Department of Agriculture to implement a more extensive grading standard than they have now?

Mr. ESCHWEGE. I think it would help, but I do want to point out that we need to think in terms of our domestic processors and how they would perceive remedying the situation only at the ports but not inland.

Mr. FITHIAN. Incidentally, I wholeheartedly subscribe to the idea of rotation of the inspectors. I would just add to your commentary that this is hardly a new idea. The Chinese did this in the 15th century on a regular basis. This was simply because, if you allow a person at the same place to build up a casualness with those whom he inspects, even though he has the very best of intentions, there comes to be an undue trust even if he is not under the table.

I think that the integrity of your own system of rotating auditors speaks for that. I think that is one of the reasons why the GAO has the fine reputation it has.

For one who has been concerned about the grain inspection scandals and the impact on the farm prices, I want to tell you how much I think your efforts have helped those of us who are trying to convince people out there that somebody in their Government cares about integrity.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Eschwege, I want to thank you and your associates for the information you have provided us this morning. We want to thank the GAO for this tremendous effort.

We are most appreciative of the excellent cooperation we have received. I assure you that this question will be dealt with seriously by both the House and Senate committees.

The Chair would like the record to show at this point that our entire committee deeply appreciates the excellent work done by the General Accounting Office with respect to the grain inspection system.

Since the committee will resume its markup of the grain inspection bill next week, we would sincerely appreciate receiving the material requested today by them. Naturally, we are aware of the constraints placed on your time by other commitments.

Mr. ESCHWEGE. We will do our best.

The CHAIRMAN. The committee will stand in recess for a few minutes until we begin the markup.

[Whereupon, at 9:55 a.m., the committee recessed.]

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, FEBRUARY 24, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:20 a.m. in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Mathis, Bergland, Litton, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, Thornton, Wampler, Sebelius, Findley, Thone, Symms, Johnson, Heckler, Jeffords, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; Gene Moos, staff analyst; John M. Lindley, Glenda Temple, and Susan Bell, staff assistants; L. T. Easley, press assistant; Weldon Barton, staff consultant, Subcommittee on Domestic Marketing and Consumer Affairs; Leington Lang, staff consultant, Subcommittee on Oilseeds and Rice; James A. Culver, staff consultant, Subcommittee on Dairy and Poultry; Alan Gray, staff consultant, Subcommittee on Livestock and Grains.

The CHAIRMAN. The Committee on Agriculture will come to order.

I think that we now have a quorum present, so we will proceed with the markup of the committee print amending the Grain Standards Act.

I am happy that the distinguished Undersecretary, Mr. Knebel, is here today to advise the committee of the Department's position with respect to any points under discussion.

A number of issues have not yet been resolved by the committee.

I think that I will ask Mr. Moos and Mr. Bor to highlight the remaining issues to be dealt with in this legislation.

I recognize Mr. Moore.

Mr. MOORE. Mr. Chairman, I would like to ask unanimous consent to provide members of the committee, if it is deemed appropriate, a reply to be prepared by several grain inspection agencies addressing a number of points raised by the GAO report. These agencies have indicated that they have a number of comments to make. I have indicated that maybe they could put them into writing and submit the statement to the members of the committee.

I told them that I would ask this before the committee.

The CHAIRMAN. Certainly all members of the committee would like to have that information.

We will be happy to receive the material for the committee file.
[The above referred to letters follow:]

THE NEW ORLEANS BOARD OF TRADE, LTD.,
New Orleans, La., March 3, 1976.

Hon. THOMAS S. FOLEY, M.C.,
Longworth H.O.B.,
Washington, D.C.

DEAR CONGRESSMAN FOLEY: The New Orleans Board of Trade, Ltd., an official inspection agency since 1915, welcomes the opportunity to submit this statement on proposed legislation to amend the Grain Standards Act. This is in addition to our statement of September 23, 1975, offering recommendations to improve the inspection and weighing supervision system.

Since then, events have occurred which should be considered in finalizing legislation.

1. The General Accounting Office has filed its report after investigating the present system.

2. The Grain Division, Agricultural Marketing Service, has proposed extensive amendments to the grain regulations which we believe will go into effect soon. The USDA, in its reply to the GAO report, has asked for additional legislative authority.

3. The Department of Agriculture has placed into operation at two export elevators Affirmative Action Progress providing stringent operational and accountability procedures. The Department has also proposed similar, but voluntary, Affirmative Action Programs for all exporters, which we believe will be agreed to by the trade.

4. The USDA has taken disciplinary action by withdrawing a license from one private inspection agency and has asked for authority to move rapidly on an emergency basis whenever necessary to withdraw licenses from others.

We have carefully studied both the GAO recommendations and those of the Department of Agriculture in its response to the GAO report. They differ importantly in only one respect: that is, in GAO's recommendation for, and USDA's opposition to, a virtually all-federal inspection and weighing system. This is a difference in basic principle. GAO apparently believes that *only* the federal government is trustworthy, while USDA believes that best results can be obtained by a cooperative effort of governmental and private sectors, properly regulated.

The New Orleans Board of Trade believes that the USDA's viewpoint and recommendations for corrective legislation should be adopted by the Congress in all essential respects. Remedial steps in the most important areas have already been initiated by the Department on a permanent basis in the case of grain regulations and on an interim voluntary basis in the case of Affirmative Action Programs.

In response to the publication of proposed regulations which appeared in the Federal Register (Vol. 41, No. 30, February 12, 1975), The New Orleans Board of Trade has gone on record in support of the proposals. If these proposed regulations are implemented, the Department would be armed with authority to safeguard export quality, even in advance of passage of additional legislation.

USDA and GAO concur in several recommendations for improvements in training, standards and equipment. Such improvements can be attained without legislation through administrative action and research, properly funded.

GAO's conclusion that the present system should be replaced does not appear to be well-documented, however, in some instances.

For example, GAO attributes high "error" rates to private agencies in grading grain, compared with AMS appeal and supervision results. The report concedes, however, that "attaining a high degree of accuracy in grading depends somewhat on refining grain standards and improving grading technology."

The GAO report cites a 26 per cent "error" rate for private agencies on inspections appealed in New Orleans in fiscal 1975. This agency has had time to review its records for the period only on export appeals, certainly the most important category. Our export shipment grades were appealed 83 times, and our certificates sustained in 78—all except five cases—a difference of only six per cent. Because some grading factors are matters of judgment and others affected by sample and testing apparatus variances, it is not certain that agency graders made mistakes, even in those five cases.

We believe that GAO's section on foreign complaints lacks convincing substantiation. There is a tendency to assume the foreign buyer is always right. Weight loss and damage to grain occur during each handling from farm field to end user in foreign countries, not the least of which is caused by foreign handling methods.

Certainly, all possible steps must be taken to improve export quality and to assure integrity. GAO's section on foreign complaints, however, does not support its conclusion that private inspection agencies should be eliminated.

One would be remiss in arguing against the need for uniformity and accuracy in grain grading. A need for uniformity of standards is also apparent in making stowage examinations as well as in personnel administration.

The New Orleans Board of Trade is in complete agreement that personnel rotation should be incorporated in the system. The Board, independent of any government regulation, has such a rotation system in effect for grain inspectors.

Most of the twelve suggestions The New Orleans Board of Trade made in its initial statement for improvement in the inspection and weighing system were included in either the Department's or the GAO's report, or both. We would now modify one recommendation, the one that suggests that all weighing of grain at terminal and export elevators be performed by official inspection personnel rather than elevator weighers. Recognizing that grain merchants have the same primary obligation for performance of contracts as any other private business, we now believe that equally good results could be obtained by requiring that all weighing be done by elevator weighers but that official supervision should be on the Class I standard of the American Association of Railroads, applied to all inbound and outbound grain. Class I means 100 per cent supervision.

We note with some pride that The New Orleans Board of Trade was asked by the USDA, after an examination of our operations and records by its Office of Investigation, to assume the duties of another inspection agency whose license was revoked last autumn. We are pleased that we were able to provide the needed service efficiently on extremely short notice. This is because we have consistently maintained a conscientious staff of grain inspection and weighing personnel, willing to devote the extra hours necessary to perform at the new location, and also to train new samplers as fast as possible.

Our experience in accepting just one new assignment on short notice during one of the busiest grain export seasons in history illustrates a point made in our first statement to the Congress. We expressed at that time our belief there would be no way an all-federal inspection service could be activated rapidly unless the government would hire most of the 800 inspectors and many of the samplers and weigh-masters of the private inspection agencies. We learned last fall that no capable new grain inspectors were available except those we had prepared by our own on-the-job training, plus a few federal retirees.

Our analysis does not imply that the Congress should forego correction of the deficiencies of the grain inspection system. Principle should never give way to expediency.

We submit, however, that only a small number of official inspection personnel has been involved in wrongdoing—a dozen or so out of a work force of more than 3,000. Most violations have been committed by employees of grain companies. Most inspection agencies and their personnel have performed competently and conscientiously.

Deficiencies in the system have been pin-pointed. Some do not involve impropriety or incompetence but are traceable to the need for grain handling research and modernization of grading standards. Those deficiencies, requiring regulatory or legislative remedies, can be cured within the present organizational framework. This is a practical solution and the only one that will avoid creation of another large and expensive federal bureaucracy, operating without truly independent checks and balances.

We are convinced that the retention of a grain inspection system that utilizes the resources of both the private sector and the federal government can work in the best interests of the nation and the people. The free enterprise system must be given every chance to work.

Thank you for allowing us to share our views with you on this important issue.

Sincerely,

GILBERT H. VORHOFF, *President.*

National Association of Chief Grain Inspectors

1908 South Stark Street, Davenport, Iowa 52802

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STATEMENT OF THE NATIONAL ASSOCIATION OF CHIEF GRAIN INSPECTORS CONCERNING PROPOSED CHANGES IN THE UNITED STATES GRAIN STANDARDS ACT

The National Association of Chief Grain Inspectors strongly supports action that is needed to restore credibility to grain inspection by promoting orderly grain marketing, protect buyers and sellers interests and build confidence in the quality and consistency of United States grain at home and abroad.

We feel the inadequacies we find in the present system can be corrected through the efforts of the U. S. Department of Agriculture without reverting to initial Federal Inspection except in the case of emergencies resulting from violations of the Act or its regulations.

The present system of State and Private Grain Inspection has served well over many years and we feel that the credibility established over these years by highly efficient, well-trained State, Private and Trade organizations should not be destroyed because of the wrong doings of a few.

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Our present system with Federal supervision and Federal appeal inspection provides a good procedure of checks and balances which would be eliminated with an all Federal Inspection System. Increased supervision and improvements in the regulations similar to those proposed by the Administrator of AMS would restore integrity and confidence in the Inspection System and provide greater uniformity and consistency in inspection procedures.

We wish to offer the following recommendations regarding "Reports on Irregularities in the Marketing of Grain" as prepared by the U. S. General Accounting Office, February 17, 1976.

The statistics shown in the error rates of appeal and supervision comparisons are distorted and misleading. If this error rate were true, it would not have been possible for the grain industry to operate for the past 60 years under such "so-called inaccuracies."

Every one with experience in inspection or handling grain knows that the quality of grain does change, that grain samples will vary with methods of sampling and that the inspection equipment is not designed to operate within such a very close tolerance.

We have many reports from Agencies in the United States regarding this latest error report from GAO. One Agency in particular mentions that they checked 1376 supervision reports

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(GR-189's) and of these 1169 grades were up-held; 158 were changes by mechanical factors, that is to say foreign material by a dockage machine or a moisture test by a moisture machine or a test weight on a test weight scale. These changes could amount to one-tenth of a percent or less. There were 49 changes on judgment, and 22 of these were actually up-graded. Of all these changes some were only changed by one-tenth of one percent or less. This is factual information and does prove that the error factor that we are hearing about is of a statistical type which we doubt could ever be corrected unless we have more sensitive, sophisticated types of equipment. Furthermore, the quoted error rate does not reflect findings by the Board of Appeals and Review which in many cases would sustain the original grade assigned by the Licensed Inspector.

The GAO report states that supervision of licensee's work is on "time permits" basis. The present Grain Standards Act has always authorized the Secretary to administer the Act and Regulations and effectively supervise all licensee's work on a full time basis.

Our Association is appalled at the absolutely slanderous statement quoted by GAO concerning the loyalty of Licensed Inspectors to the United States.

The GAO reports inadequacies in sampling. We recommend the U. S. Department of Agriculture vigorously pursue new methods

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of sampling and utilize extensive research for improved modern sampling equipment.

The GAO report states they are not able to make a cost estimate of a Federally operated Inspection System. It is a fallacy to believe that a Federal System could be developed that could afford all the timely, efficient, around-the-clock services at the nominal costs that private and State Agencies now provide, without a tremendous increase in cost. Based on Appeal Inspection fees as compared to average licensed inspection fees, costs would be considerably greater. These costs would eventually have to be borne by either consumer, farmer producer or taxpayer. The inefficiency and cost of an all-Federal Inspection System are exemplified in many other Government operated businesses, such as, Post Office, Federal Meat Inspection, Medicare, Food Stamps, Social Security, to name a few.

GAO conclusions on foreign grain buying and complaints are not factual as compared to statements in the report of Congressman Edward R. Madigan in his report to the Housing Interstate & Foreign Commerce Committee, in which he stated in part, "Officials of the European Common Market who will import another 12,000,000 tons of United States grain this year told me that complaints about the quality of United States grain are overstated and come mostly from speculators who have paid too much for the grain." Furthermore, as we see this problem, because

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of the way we physically handle grain from the farm to the overseas buyer a Federal Inspectors Grade under a Federal System will be no better than the licensed inspectors grade under our present system,

In conclusion, the National Association of Chief Grain Inspectors of the United States wish to state that our own inspection system has been victimized by a biased report made by Federal employees who were previously briefed on the necessity of a Federal System of grain inspection and who in making this report lost all point of objectivity as to the problem and its solution.

Every time the Federal Government takes over private business something is lost. We, therefore, ask that no legislation be passed that will do away with private inspection and grading of grain and that Congress take whatever appropriate steps they deem necessary for the reasonable enforcement of existing laws in this area.

Furthermore, we believe that changes as promoted by the GAO from our present system would have a chaotic effect on our entire marketing system due to lack of experience and expertise by the U. S. Department of Agriculture personnel. Our Association is prepared to extend a wealth of factual knowledge, based on years of experience, to Congress and the U. S. Department of Agriculture to help correct our present problems.

Mr. POAGE. Mr. Chairman, may I raise two points?

The CHAIRMAN. Certainly.

Mr. POAGE. I have been advised that the Secretary's mother has died.

I am sure that the committee will want to express sympathy to the Secretary.

I would like to move that we do so.

The CHAIRMAN. The gentleman from Texas moves that the Committee on Agriculture express its condolences to Secretary Butz and to his family on the death of his mother.

Mr. WAMPLER. I second the motion.

The CHAIRMAN. Is there any objection?

Hearing none, it is so ordered.

The staff will prepare an appropriate expression of the committee's sympathies in that regard.

Mr. POAGE. Mr. Chairman, I thought maybe it would save some time if we could make a decision before going into matters that the staff might want to deal with.

I must be the only member of the committee who feels as I do about this bill.

After listening to the testimony, I think it is perfectly ridiculous for the U.S. Government to put its stamp of approval upon grain trades. I don't know why the U.S. Government needs to guarantee the quality of the grain.

These traders are perfectly competent to make their own decisions as to what they are buying.

If they are left to their own devices, they cannot blame the Government for poor grading. They would do their own.

I am perfectly willing to make space available for them. I am perfectly willing to have the foreign buyers and their representatives present. They can either have them from their own home or they can employ Americans to do the job for them.

But I think that it is ridiculous for the U.S. Government to continue the process of putting what amounts to a guarantee of a grade. This seems to be ridiculous.

I don't think that a majority of the committee agrees with me. I don't want to put anybody on the spot. I think it is an unfortunate practice that we got into, that is, of too often having someone, who has some idea such as I have and which is contrary to the rules, to come here and to try to put everybody on the spot by calling the roll.

I have no desire to call the roll, Mr. Chairman, but I would like to see if there is substantial support for this and if there is not, then I will keep my mouth closed about this part of it, anyhow.

This will probably save you a great deal of time.

I just thought that if we could take a sort of an informal poll of the committee, then this would be helpful.

If there is substantial support, then I hope we can consider it; if there is not, then I will withdraw.

Mr. BERGLAND. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. BERGLAND. When the committee suspended activity on this matter, we were working from the committee print. As I recall, we

had gone about two-thirds through the print. Some amendments had been adopted and some rejected.

I am not clear as to what had been accomplished up to that time.

Could the staff review the progress that has been made so far?

Furthermore, I would like to know those decisions which were arrived at at those times and if they are still binding; or are we rewriting?

The CHAIRMAN. I will try to answer the gentleman's question.

The concept of marking up the committee print was adopted by the committee, as I understand it, in order to give flexibility to the work of the committee. None of the decisions which have been reached are binding on the committee in the sense that they prevent the offering of amendments or changes in the bill.

In other words, we would dispose first of the major issues, adopt tentative language in the committee print, and then proceed to introduce a clean bill under the cosponsorship of those members of the committee who wanted to affix their names.

That clean bill would be brought before the committee for final markup and reporting.

I would assume that the bill, which was brought back, would clearly reflect the judgment of the committee and would not thus require another major amendment process. There would be nothing to prevent other amendments from being offered at that time, however, should the members so choose.

Mr. Poage, perhaps we could have the staff state what tentative decisions have been made thus far. After they have discussed the areas that have been covered, the Chair could then put in Mr. Poage's proposal for a similar judgment of the committee as to how they want to proceed.

If there is no objection to that approach, we will proceed.

The staff will indicate what has been covered so far and what major areas remain to be discussed.

Mr. BOR. The first big issue that is treated in the committee print relates to the function of official inspection at port locations.

The committee print provided that at a port location inspection would be conducted by the Department of Agriculture except that the Secretary could, through a cooperative agreement with a State, authorize the State to conduct the inspection functions pursuant to criteria which had been set out by the Secretary.

The committee voted to delete from the bill, that is, from the committee print the provision that would authorize the Department to permit States, though a cooperative agreement, to conduct inspections at port locations.

The committee print now provides that at port locations inspections would be conducted solely by the Federal Government. At locations other than port locations, the committee print authorizes the Secretary to provide for official inspection through private agencies or State agencies which have been designated by the Secretary.

In order to obtain designation the agencies would have to meet with certain qualifications. One of the qualifications is that they would be required not to have a conflict of interest which is prohibited by one of the sections of the bill.

At the time that we last met, we had just reached the issue of conflict of interest.

The committee print has language which gives the Secretary the authority to determine whether a particular agency has such a conflict of interest as to preclude objective results in its operations.

If it does not provide for objective results, then the Secretary would have to rule out the agency as not being in compliance with the conflict of interest provisions.

In essence, this would mean that the Secretary would be dealing with the designated agency on a case-by-case basis.

The Department's proposal, on the other hand, had provided for a very strict conflict of interest rule. The Department's proposal would have ruled out any agency which had any type of a conflict of interest with a grain merchandising, transporting, or handling firm.

Recently, the Department had issued some proposed regulations. It proposed administratively to provide for this type of a conflict of interest rule.

For the assistance of the committee, the staff had prepared a compromise proposal between these two provisions. The compromise proposal has two options: one would provide for the rule in the committee print as the general rule but authorize the Secretary, if he determined it advisable at any one or more locations, to implement that provision by the strict conflict of interest provision; and as a second option, it would start out with the general rule that the strict rule should apply but give the Secretary discretion at any one or more locations to provide for allowing grain exchanges, chambers of commerce, or boards of trade to continue to operate a grain inspection agency if the Secretary determines that it would not prejudice the objective results of its work.

Mr. BALDUS. May I ask a question at that point?

The CHAIRMAN. Yes.

Mr. BALDUS. We are talking about terminal locations?

Mr. BOR. No; this is at interior points.

At interior locations we had tentatively decided that inspection would be conducted—Excuse me, I am talking about terminal locations at interior points.

Br. BALDUS. As distinguished from ports?

Mr. BOR. That is correct.

Mr. BALDUS. Does the committee print give authority for the Federal Government to handle the inspection there? That is, if there is difficulty in finding someone interested or difficulty in finding the right kind of person—

Mr. BOR. Yes; it does. It gives residual authority to the Secretary to provide for Federal inspection if the Government were unable to find a State agency or a private agency which was able to undertake the job.

Mr. BALDUS. Thank you.

Mr. BOR. Another issue which remains to be decided is the issue of weighing.

At the present time the Grain Standards Act does not give the Federal Government or the Department of Agriculture any authority over

the weighing process at any point—whether it be at port locations or at interior points.

The GAO made a recommendation that legislation should provide for Federal authority over weighing conducted at either port locations or interior points.

The committee print has a couple of options which deal with the matter of weighing. The staff has prepared a third option for the consideration of the committee. This issue has not yet been addressed by the committee.

Another issue relates to registration of grain firms. The committee print has provided that firms, which are engaged in the merchandising of grain, would have to be registered with the Secretary of Agriculture. If the firm did not comply with the requirements of the act, then the Secretary was authorized to suspend or cancel its registration—in which event it would be unable to continue to operate.

This provision had been borrowed from one of the Senate bills. It has not yet been decided or discussed by the committee.

The CHAIRMAN. The financing of the system was also there.

Mr. BOR. Yes—whether it is to be operated solely through fees which would be assessed against the user or whether in part it would be financed by appropriations that would be made by the Federal Government.

Another provision in the committee print deals with the refusal of inspection and civil penalties in the event of violations of the act by a grain merchandising firm or, for that matter, by any other type of a firm which is involved in the activities which are provided for under the act.

Still another provision which has not been discussed relates to the study of the grain standards. We had in the committee print a provision which would require the Secretary to conduct a study of the grain standards and report the results of the study to the committees of Congress within a specified period of time and make whatever changes are deemed desirable as a result of that study.

I understand that there is an amendment which will be offered and which is designed to clarify the provisions of this section.

We had discussed a provision in the bill, that is, the committee print, which deals with the prohibition against divulging any information which is obtained by the employees of the Department from firms which have registered with the Department or in connection with the activities under the act.

The committee had added an amendment to this provision which would state that nothing in the act shall be construed as prohibiting any such person from divulging information which he reasonably believes involves conduct prohibited under the act or under title 18 of the United States Code.

This was the result of a discussion over a period of a day or so.

Mr. BEDELL. I did not find that in the committee print. Is that in the print?

Mr. BOR. No; that was an amendment that the committee had decided upon and which is not yet in the print but which will be in the bill that reflects all of the action that has taken by the committee.

What we have done was to pass around to members of the committee a sheet which describes what those changes are which have been agreed

to by the committee. Later you may want to refer to the sheet in order to refresh your memory on what has been done.

Another issue with which we need to treat is how much time will be needed to provide the Department of Agriculture to implement the provisions of the act.

We have in our bill a period of up to 2 years. The Secretary would be given authority to shortcircuit this time to such extent as he deems desirable.

I think this generally covers the provisions remaining to be discussed.

The CHAIRMAN. As the members can see, we still have a great deal of work to do on this bill. Initial decisions have been made, but they are tentative.

At this juncture I think it would be appropriate to present the proposal raised by Mr. Poage which would remove the involvement of the U.S. Government in the grading of export grain. In essence, this would leave only the private parties involved in transactions.

Does everyone understand the proposal?

Mr. BERGLAND. Mr. Chairman, would this proposition undo the amendment that was voted by a count of 22 to 9 and which established Federal inspection at export locations?

The CHAIRMAN. Yes. It would also eliminate any U.S. involvement in the process of designating agencies to perform inspection.

Those involved in the grain trade would make their own arrangements for inspection as provided for in contracts.

Mr. THONE. Mr. Chairman, very briefly let me say this.

A group of us went down to New Orleans. To be sure we are not 3-day experts, but I think we came back pretty unanimous in the opinion that in that port area there are indeed problems of such magnitude that the proposal, suggested by the distinguished gentleman from Texas, would be most inadvisable.

There is bribery, fraud, theft, income evasion, and various and sundry transgressions. I could go on and on.

I think that we concluded that there is a breakdown of a very significant nature of the entire U.S. grain-moving operation.

As I understand it, if you are going to ship grain, then inspection is mandatory at the export level. I don't see how, Mr. Poage, we can walk away from that.

I think the entire weight of the evidence and the testimony is to the contrary.

I am as good as free enterpriser as anyone on this committee. I think that maybe we could use a little more competition in this area. I have vocalized on this before. But that is another story.

One of the persons who influenced us a great deal down there in New Orleans is Mr. Gallinghouse, the U.S. attorney.

I was just reviewing some of Mr. Gallinghouse's testimony before the Senate committee on September 25 and 26 of last year.

I would suggest that all members of the House committee read it because it is appalling indeed.

Mr. Poage. Mr. Gallinghouse suggests that he started out a little bit with the thought that you had. He tries to lean over backward to establish credentials in that regard. I don't have to recite what is in the record here, but he has some mighty, strong recommendations. They conclude that anything but a complete federalization at the export level is just not even going to begin to get the job done.

Frankly, I think that without a doubt that that is my conclusion. I represent an area of the Midwest, as you know, and we are totally captive of the gulf ports. I guess 60 to 65 percent of all exports are going down there. I know that it is not at all a simple subject. In fact, like everything else that we get into around here, the more that you study and the more you review it, the more confused you are by the facts.

But I will be very blunt. Maybe we could have a response from some of the parties who might be more interested than others.

From all of the information that we received, the State inspection system has excellent spots. Mr. Sebelius' area has an excellent system. Mr. Foley's area is handled very well.

We have heard of the excellent job that is being done. We have heard from other objective observers.

If there were a way for me to somehow allow that type of State inspection without the threat hanging over me and my people whom I represent, that the State of Louisiana would never ever again be in the inspection business—then maybe I would have more of an open ear and heart on this thing.

I am convinced, from my visits—as short as they were—especially with this man, Mr. Gallinghouse, who impressed me as an objective, dedicated, conscientious public official who was only trying to do a good job: There is no way that you are going to clean up that nest of rats down there unless you really reevaluate and somehow effectively come to grips with the magnitude of that ingrained problem that they have.

Mr. POAGE. Will the gentleman yield?

Mr. THONE. Yes.

Mr. POAGE. I want to make it clear that I am not offering myself as an expert. I know very little about grain movement. I have nothing much except a general philosophy.

After hearing this testimony, I am convinced—as you are—that we have to make some adjustments. We have to either get the Federal Government out of this mess or we have to go further into Federal control.

We may have to rely more on governmental decisions. Personally, I don't like to rely on governmental decisions. I would rather rely on the trade people themselves.

I am convinced that if the trade had the opportunity to make their own decisions, there is not a thing in the world that I can see to prevent them from making them. When we buy goods, we buy without relying upon a stamp. When we buy oil, we don't rely upon a stamp from the King of Saudi Arabia. The people who are buying look at it and say whether or not it is what they want.

I don't know why the people who buy our grain should not look at it and say, "Yes, I want this," or "No, I don't want it."

Why should they rely upon a grade that the U.S. Government has propounded?

My proposal is to say that the Government should get out of it and let the trade handle its own affairs and let them wash their own linen.

I don't want to take up your time, Mr. Chairman and Mr. Thone, nor do I want to take up the committee's time. I want to be on record for getting the Government out. I am not trying to embarrass anybody. I am not asking that any of you go on record.

But I want to go on record as wanting to get the Government out of this business.

Mr. THONE. Mr. Poage, you are hearing the same things back home that most of us are hearing. People are fed up and sick and tired of the dominance of the Federal Government. There is no question about it at all.

And, if I had the slightest thought or indication that doing what you suggest would in any way solve or help in this area, then I would be behind you 100 percent; but frankly, Mr. Poage, I just see no way that we can go that way.

We are talking about the grain export business which was \$20 billion last year. The stakes are high indeed. The stakes have increased by the graft and greed and corruption. I don't think that there is any way that we can pull back.

The CHAIRMAN. Mr. Nolan?

Mr. NOLAN. I have no comment at this time.

The CHAIRMAN. Mr. Bedell?

Mr. BEDELL. I would like to associate myself with the remarks of the gentleman from Nebraska. I have seen the problem in New Orleans. I would simply like to add that I think we have to be greatly concerned about the time, when it comes, when we move from the sellers' market to a buyers' market in grain.

Some of the people who have testified before us have said that one of the things that the foreign buyers do like about our grain is the fact that we are set up to provide an inspection service so that they can have some indication of what they may be getting.

I think we have a tremendous responsibility, not only to our farmers but to the entire society, to see that we straighten up our inspection service so that we can give them what they want and so that we will get to the position where American soybeans—instead of selling for less—will sell for more money on the Rotterdam market than soybeans from Brazil.

The CHAIRMAN. Mr. Moore?

Mr. MOORE. Mr. Chairman, I feel that inasmuch as my State is being battered around here a bit that maybe I should say a few words in its defense.

I have been on both sides of this issue during the deliberations of this committee in trying to find the right answer.

I have grain growers in my State which use the same elevators used by farmers in Nebraska and Indiana and the rest of the country. I also have one of the grain elevators just across the river from my district. It means a great deal to the economy of my State and my district.

I disagree when you say that there is nothing to be done to clean up that "nest of rats," and I don't accept that nomenclature for my district or my State.

Quite the contrary, there were people who were supposed to have been seen on this visit to Louisiana who did not get seen. I don't know why, but they were waiting to be seen. They were calling me asking me where you all were.

There are plenty of honest inspectors and grain elevator operators all over Louisiana, and there are some who have been indicted. That is quite true. Nobody disputes that.

I think that you can take the existing system and build some protections into it.

But let me tell you something: What you are legislating here is morality. I cannot see where you can find a Federal employee more honest than a State employee or a private employee—if he is not forced into a conflict of interest situation by his employer. That is what we are talking about.

As a matter of fact, I understand that we are going to give people a certain amount of time to go from the existing system into the Federal system by waiving the civil service requirements; so you are going to have some of the same people working in the new system.

If you can save the existing system, then I think it can be saved and I think that these people who are running these elevators are trying to work honestly and want to work with USDA and the committee.

I know Mr. Gallinghouse personally, but I will not make any comments about his comments. I will simply say that I think he may have gone a little too far in some of his comments, and that the committee is overreacting.

I think it is wrong to say that we are going to promote federalization of the entire system as being the answer.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. Mr. Chairman, I would make this observation.

We have a great deal of work to do in this committee between now and March 15; and then again on May 15. I fear that each time that we meet on the grain inspection bill that, if we return to the basic argument—which has now been voted on twice in the committee—then we will terminate this 94th Congress without a bill.

I believe, if I am not mistaken, that we had a vote. Then there was a move to reconsider. That move was handily carried.

I was not under the impression that I would be here this morning redoing the arguments that we did 2 and 3 months ago.

I was hopeful that we might be going on to other sections of the bill.

The CHAIRMAN. Will the gentleman yield?

Mr. FITHIAN. Yes.

The CHAIRMAN. I understand well enough that some of the members of the committee might feel somewhat frustrated in going over this matter again, but let me point out something.

This is the key issue which tends to affect all of the other decisions. Once we decide to go in one direction or another, to federalize or not, then many of the other issues such as financing and conflicts of interest will fall into a more logical pattern and be resolved more quickly.

Even though I understand your concern about going back over this issue, it does play an essential role in the way we construct the legislation and how we make related policy decisions.

Mr. Poage really has not had an opportunity to air this issue. We decided tentatively whether to allow the States to be subject to the Secretary's contract authority or whether to go all-Federal. We did not offer the opportunity to the other side of the coin to discuss whether or not to withdraw Federal inspection.

Mr. FITHIAN. I thank the chairman for those comments. I wholeheartedly agree that this is the essence of the legislation before us.

My only concern is that we have threshed this out well. We had some 30 members of the committee present. We had voted on it.

The only thing that has transpired since that time is that the GAO audit, for which we have waited, was made public. As everyone knows, the burden of the GAO audit is to urge us to go considerably beyond where this committee decided that it would go.

If I may be allowed an editorial opinion, the committee decided not to go that direction but to federalize the export terminal inspectors.

So we have worked our way to this point, and the will of the committee has been worked to a general consensus on something of a compromise between doing nothing or even perhaps getting out altogether and federalizing the entire grain inspection system.

So, it seems to me that that is the compromise at which we have arrived in the deliberations of the committee.

I would suggest that we move forward.

The CHAIRMAN. Mr. Krebs?

Mr. KREBS. Mr. Chairman, I have a brief comment.

I would like to commend the gentleman from Nebraska, Mr. Thone, who—as I recall—argued quite forcefully against any Federal inspection, if my memory serves me correctly.

He went down to Louisiana. He came back convinced that his initial position was erroneous.

I want to tell the gentleman from Nebraska that I certainly admire his courage for coming back to this committee telling us that he had changed his position.

Thank you.

The CHAIRMAN. Mr. Sebelius?

Mr. SEBELIUS. There is something to be said for what Mr. Poage is advocating here.

This morning about 6 o'clock I read a case study entitled "Grain Quality Losses Between Origin and Destination of Export Grain." It was done by three members of the faculty at the College of Agriculture of the University of Illinois.

This is a test case of the loading of corn. They loaded some soybeans, too. Part of the load came out of Toledo and was loaded there. It was checked at that time. The balance was loaded on a lighter after it got down to the mouth of the St. Lawrence so that the ship could haul more.

In the hold, above and below separation, it went from the lighter and into the ship. When they offloaded in Rotterdam, again everything was checked before going to the barges.

This was feed corn of the 1974 crop which had been artificially dried.

The amount of breakage in the kernels and the amount of separation jumped from the time it was loaded out of the elevator to 3.6 percent of broken kernels.

When it arrived in Rotterdam, it was up to 13.2 percent.

After it was put onto the barges at Rotterdam, it was up to 16.6 percent.

So, the handling after inspection is important.

Are we then putting a guarantee? You can't do anything about it as far as the handling of the grain after inspection.

I just wanted to make that point.

This is a very good study as to just what happens to grain after it has been inspected. I recommend it to your consideration.

The CHAIRMAN. Mrs. Heckler?

Mrs. HECKLER. Mr. Chairman, although I don't represent a grain-growing State, I feel that there is a public policy question of enormous significance to the country particularly in the area of balance of trade. I feel that there is a public interest in protecting the integrity of our products as a significant section of our economy.

A few weeks ago I prepared an amendment which we discussed in the committee. Since that time, I have tried to address some of the objections which various members have raised.

The thrust is not to go to federalization, which I would personally oppose, but to try to strengthen the conflict of interest provisions in the bill.

I would use that as a means of restoring the integrity to the system. At the appropriate time, I would ask to be recognized by the chairman for consideration of this amendment.

The CHAIRMAN. Thank you.

If there is no further discussion, we will proceed to again determine the committee's opinion. I guess that is what we are talking about.

This time we will approach the question of Federal involvement from a different angle. We will be deciding whether the committee feels that it should abandon the concept of Federal or Federal-State inspection at export ports as well as any Federal involvement in the weighing process.

Mr. Poage proposes that alternative approach.

I recognize Mr. Harkin.

Mr. HARKIN. I have a question.

I apologize for being late.

The CHAIRMAN. Are you asking for the question or do you wish to ask a question?

Mr. HARKIN. I thought we voted on this once and then twice; and this makes the third time that we are voting on it?

The CHAIRMAN. It is a different alternative.

I tried to make it clear when we started this process of marking up the committee print that it would be done on a tentative basis so that these preliminary decisions might serve as guidelines to the committee and the staff rather than be considered irreversible decisions.

Anybody is free to offer any amendments at any time. We have not yet begun the formal markup in the usual sense of that term.

If there is no other discussion, we will move to respond to Mr. Poage's suggestion.

All in favor of the suggestion of the gentleman from Texas that we move to markup legislation which would remove the USDA from involvement in U.S. grain inspection and the setting of standards for grain, raise your right hand.

The CLERK. There are three.

The CHAIRMAN. All opposed?

The CLERK. Sixteen.

The CHAIRMAN. Mr. Poage, the committee is obviously not persuaded.

This has been an important issue, and it has been well worth the discussion.

Mr. BERGLAND. I have an amendment, if we are ready for it.

The CHAIRMAN. I will recognize the gentleman in just a moment.

The Chair's intention now is to proceed with amendments to the committee print. We will be in markup tomorrow and Thursday, as well.

At that juncture, we will have to determine what our future schedule will be.

I recognize the gentleman from Minnesota.

Mr. BERGLAND. I have an amendment which has been prepared. I think the clerk has copies for distribution. It is a very simple proposition.

On page 26, immediately after line 2, I would insert the following:

(13) Knowingly prevent or impede any buyer or seller of grain or other person having a financial interest in the grain, or the authorized agency of any such person from observing the loading of grain inspected under this act and the weighing, sampling, and inspection of such grain under conditions prescribed by the Secretary.

Mr. Chairman, this amendment would make it a prohibited act subject to the criminal and civil sanctions for any person to prevent or impede the buyer or seller of grain from observing the loading of grain inspected under the act and the weighing, sampling, and inspection of such grain.

I have been told that certain buyers—foreign buyers of grain—have attempted to observe a loading or have sent an agent to watch the loading of grain while it is physically being put on board ships—but have been run off the premises and threatened with trespassing.

It seems to me that if we really want this to work, any buyer of grain ought to be able to observe the loading of his commodity—or a designated agent to observe these goings on. It is done in sugar. It works very well.

A foreign buyer may not necessarily want to exercise his rights under this authority, but it seems to me that he ought to have that right.

He could therefore insure that the grain being loaded on board ship is indeed the grain he contracted to buy.

I don't think this is controversial. It seems to me this proposition could go a long way toward restoring confidence in the American grain standards.

That is all that I have unless there are questions.

The CHAIRMAN. Is there discussion?

Mr. Harkin?

Mr. HARKIN. This means that a foreign buyer, if he wanted to have an inspector of his own——

The CHAIRMAN. May I interrupt?

The Chair has advised some of the members that we are trying to update the public address system which is sadly lacking.

My apologies to Mr. Harkin, but we do have some trouble hearing in the back row. Could you please speak a bit louder.

Mr. HARKIN. Thank you, Mr. Chairman.

This amendment really says that a foreign buyer of grain could have, if they so desired, an inspector or a person at the export ter-

minals who could go ahead and inspect the grain as it was being loaded on the ship, is that basically what the amendment says?

Mr. BERGLAND. He could observe the grain being loaded.

Mr. HARKIN. It says, "from observing—Oh, observing."

Mr. BERGLAND. "Observing the loading of grain inspected under this act."

Mr. HARKIN. "And the weighing, sampling, and inspection of such grain under conditions prescribed by the Secretary."

This amendment would allow them to observe, but it would leave the Secretary the authority as to whether or not he would allow them to go ahead and do their own inspection, is that correct?

Mr. BERGLAND. No, the intention here is to explicitly invite a foreign buyer or his designated agent to observe the loading of grain that is going into the ship which was contracted to be delivered to his facility at some overseas location.

It was not intended to convey to that foreign agent the authority to undertake an official inspection.

I would have to defer to counsel for the legal obligations.

It was not my intention, at least, to authorize an agent of the foreign buyer to engage in the business of officially inspecting for the purpose of arriving at the official grades standards.

Mr. BOR. That is right, Mr. Bergland.

The way it was drafted was merely to provide an opportunity for a buyer or seller, or anyone financially interested in the grain, to observe the inspection process or the weighing process—but not to give him an opportunity to independently take samples or independently make his own weights.

The CHAIRMAN. Is there other discussion?

Mr. Baldus?

Mr. BALDUS. The amendment says that it would strike the language between line 18 and line 20.

Is that so?

It says, "strike new subsection (a) (12) and insert in lieu thereof new subsections (a) (12) and (a) (13)."

Mr. BOR. All this does is to add another subsection to the subsections which are listed on page 25.

Mr. BALDUS. (a) (12) would stay there?

Mr. BOR. That is correct.

The purpose of the new section now would refer both to (a) (12) and (a) (13) instead of merely to (a) (12).

Mr. BALDUS. Thank you.

The CHAIRMAN. Mr. Poage?

Mr. POAGE. Why should not the buyer have a right to take a sample of this grain? He is having to pay for it. Why should he not have a right?

What is wrong with letting him physically see what he is buying? He will not simply observe. What is wrong if he wants to really look at it himself?

I don't know too much about the grain business, but you cannot tell me that it cannot be done.

It is done. It has been done for 150 years in the shipping of cotton.

The Federal Government grades cotton. The Federal Government can grade cotton, and the grade cannot change like it can with wheat.

When you take a sample out of this bale of cotton, you cannot change the quality of what is in that bale of cotton until those ties are taken off. There is no physical way that you can do it.

So, the grade on a bale of cotton would seem to me to be much more conclusive than the grade that is made somewhere on a carload of wheat. You mix the wheat up with somebody else's wheat.

You can put foreign substances in with that wheat. You cannot put something into the bale of cotton.

There is no way that you can put something into a bale of cotton, but the foreign buyers will not accept those grades, even though the U.S. Government grades them.

The foreign buyers buy and say, "Yes, we want 1,000 bales of Midland 13/8 inches," or whatever they are buying. But they, themselves come along and pull a sample and look at it themselves. Their agent does.

If they question that and if they feel that the Government grade is not what it is supposed to be or what it says it is, then they go to arbitration about what the actual grade of that cotton is.

It has worked. It continues to work. You have not had the kind of unfortunate reports about the grading of cotton that you have had about the grading of grain.

This is because the buyer always has an opportunity to check the Government grade. He has an opportunity to make his own determination as to whether or not the Government grade was correct.

I don't think that there is any man living who can grade 100 bales of cotton the same as some other man. I think there will always be some differences because it is not an exact science.

But there will not be any great differences. There will not be any great variation.

So I don't see why we should not let this buyer, if he wants to, sample the grain as it is going into the ship. Who does he hurt by doing that? How does it stop trade? How does it slow down exports? Are not these people more likely to buy American grain if they can sample it themselves?

Mr. BERGLAND. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. BERGLAND. I think that the gentleman makes a valid point, but the problem in the past has been that in certain cases the foreign buyer was on the premises and was told by the elevator operator to get off. He was told that he was trespassing on private property.

The buyers objected to this action as they wanted to observe the loading of their own grain.

Mr. POAGE. There is nothing wrong with what you are suggesting. I am merely suggesting a question as to why there is the limitation.

Mr. Baldus asked you if you could sample the grain, and you said no.

Mr. BERGLAND. Maybe I misunderstood his question.

It would not strike me as being inconsistent if we were to permit the foreign buyer to draw a sample. That would seem to me to come under the general heading of observation.

What I thought the gentleman was asking was whether or not this would in any way establish an official grade. It would not, obviously.

We could not have the official grade determined by the agent of the foreign buyer.

I would have no objection at all to encouraging that buyer or his agent to be on board the ship and to take the samples——

Mr. POAGE. I think that that would be a great improvement. Under those circumstances I would be for your amendment. I think it would be a great improvement.

Let the agent of the foreign buyer watch it, and if he wants to check, then let him check.

Mr. BERGLAND. I think that is a good idea.

The CHAIRMAN. Will the gentleman yield?

Mr. BERGLAND. Yes.

The CHAIRMAN. Do I understand the amendment to say that if the Secretary so approved, it would be possible for the foreign observer, purchaser, or any other person having an interest in the grain to observe the inspection and loading processes? Do I further understand it to mean that, with the Secretary's approval, these individuals may also take samples?

Mr. BERGLAND. That is correct.

The CHAIRMAN. Since the amendment would not specifically require the taking of samples, am I correct in inferring that this would be at the Secretary's option?

Mr. BERGLAND. That is correct.

Mr. Moos. Mr. Galliard brings to our attention one problem with the sampling and inspection of such grain under conditions prescribed by the Secretary.

Inasmuch as they don't permit the people to observe the sampling—buyers or sellers—because of the fear of them being under the subtle pressures that might be exerted upon the inspector at that particular spot, then we have a subjective judgment.

The CHAIRMAN. Is it for that reason that they do not permit observation?

Mr. Moos. Yes.

The CHAIRMAN. Is that the current position of the Department?

Mr. GALLIART. It is not a matter of sampling, as much as it is a matter of analysis and inspection. The Department does not object to anyone watching the sampling.

But the actual analysis where there might be someone standing over our shoulder watching the subjective analysis, in many cases has placed undue influence on the inspector.

The CHAIRMAN. Mr. Grassley?

Mr. GRASSLEY. Under those circumstances that would be like saying that a farmer would not have a right to see the sample graded at the point of his original sale. I think that this philosophy that the person whose grain is being sold shouldn't have an opportunity to look at it is the wrong course to follow.

The CHAIRMAN. I understood the comment to pertain only to the analysis of the grain sample which is conducted in the laboratory, not at the loading dock.

So, what this covers is the actual loading, sampling, and individual inspection of the grain.

I do not think that I understand the gentleman's amendment encompasses the problem of someone looking over the shoulder of the inspector in a laboratory.

Mr. BERGLAND. It was not my intention that such an act would be authorized.

Do the attorneys have any problem with the language which is constructed here in that regard?

Mr. BALDUS. In either case it seems to me that under conditions prescribed by the Secretary, it allows him to write a code of conduct under which inspection surveillance can be done.

So, there is enough authority, it seems to me, to establish the conditions under which surveillance can be done. It seems to me that that is broad enough in its wording.

Mr. BOR. What we might do, in order to make it abundantly clear, is to insert a few words after the word "inspection." You could have the parenthetical expression "other than the analysis."

So it would be: "in the weighing, sampling, and inspection [other than the analysis] of such grain."

Mr. BALDUS. Does counsel think that that is necessary?

Mr. BERGLAND. I see the representatives of the Department shaking their heads in the negative.

Mr. KNEBEL. We have no problem as proposed.

The CHAIRMAN. I think that the legislative history will make it clear that that is intended here.

I assume that the term "conditions prescribed by the Secretary" refers to those conditions announced and promulgated by the Department which have been determined to be both feasible and in accordance with furthering the purposes of the act.

Is there other discussion?

If not, will all those in favor of the amendment of the gentleman from Minnesota signify by raising their right hands.

The CLERK. Twenty.

The CHAIRMAN. Those opposed?

The CLERK. None.

The CHAIRMAN. The amendment is approved.

Are there further amendments to be offered?

Mr. Bedell?

Mr. BEDELL. I have an amendment. It has to do with the inspection of soybean meal for export.

The problem arises from the fact that it has been possible in the past that if the contract called for the inspection of soybean meal, for the private inspection firms to conduct such inspection.

If we remove the private inspection firms from our export points, then we are going to have to have some arrangement so that that inspection can be performed when it is called for in the contract.

This amendment simply says that the Department will be authorized to make such inspection when it is called for by either the buyer or the seller. Fees charged will be covered in a manner similar to that which happens under other grains.

Mr. POAGE. I don't know that that is applicable at all.

It would seem to me that it would make sense to include cottonseed meal and sunflower meal along with soybean meal.

I don't know that it is needed or helpful, but certainly it would seem to me to be in order to include it.

Mr. BEDELL. I see no harm in doing so.

With unanimous consent, I would like that included in the amendment.

Mr. POAGE. Thank you.

The CHAIRMAN. Without objection, the terms "cottonseed meal and sunflower meal" will be added.

I wonder if the Department has a comment which it would like to make at this time.

Mr. KNEBEL. Mr. Chairman, it is my understanding that we do provide this service under the Agricultural Marketing Act, upon request, at this time.

It is without grade.

This again goes back to your basic question of whether or not you are going to have an all-Federal system. It may well be mooted, depending on how you come out in the final analysis.

We would have no problem if it is necessary in shaping the bill.

The CHAIRMAN. Mr. Undersecretary, if there are any amendments to be offered which the Department would like to review in more detail, I think it would be to the advantage of the committee as well to defer their presentation and consideration here for a day or two.

Apparently you have no problem with respect to the feasibility of this amendment, is that correct?

Mr. KNEBEL. Yes.

The CHAIRMAN. I recognize the gentleman from Iowa, if he wishes to further discuss his amendment.

Mr. BEDELL. We should have added, immediately before the words, "Inspection of Soybean Meal," it should read, "page 10, immediately after line 2, and insert the following."

The CHAIRMAN. Without objection, the amendment of the gentleman from Iowa will be included in the record at this point.

[The amendment offered by Mr. Bedell follows:]

AMENDMENT TO H.R. ———, OFFERED BY MR. BEDELL

Page 3, line 10, strike "subsections (g), (h) and (i)" and insert in lieu thereof "subsections (g), (h), (i) and (j)":

"Inspection of Soybean Meal

"(j) Notwithstanding any other provision of this Act, in the case of any contract which involves the sale of soybean meal for purposes of having such meal transported to any place outside of the United States and which contains a provision that such meal shall be inspected by the Secretary in order to establish its protein, fat, fiber and moisture content (or the content of any one of those elements), the Secretary shall cause such soybean meal to be inspected by authorized officials of the Department of Agriculture after final elevation as the meal is being loaded aboard. Such inspection will be conducted only if requested by any party having an interest in the contract. The purpose of such inspection will be to establish the protein, fat, fiber, and, moisture content, or the content of any one of those elements, of the soybean meal which is being inspected. The Secretary shall charge fees for inspection services under this section similar to charges for other inspections under this Act, and such fees shall be paid by the person selling the meal. As used in sections 12 and 13 of this Act, term 'grain' shall be deemed to include 'soybean meal' and the term 'official inspection' shall include determinations made under this subsection."

The CHAIRMAN. Is there further discussion?

If not, all those in favor of the amendment of the gentleman from Iowa, will signify by raising their right hands.

The CLERK. Twenty-two.

The CHAIRMAN. Those opposed?

The CLERK. None.

The CHAIRMAN. The amendment is approved.

I recognize Mrs. Heckler.

Mrs. HECKLER. Mr. Chairman, I have an amendment.

This amendment goes to page 10, section 4. It is an attempt to strengthen provisions in the bill.

Under the committee print,

No official inspection agency or any member, officer, employee, or stockholder thereof shall have such a conflict of interest, either directly or indirectly, in any business involving the transportation, storage, merchandising, or other handling of grain or use of official inspection service as to jeopardize the integrity or the effective and objective operation of the inspection service performed by such agency.

I think that the committee print sets up a vague standard so as to jeopardize the operation of the inspection service and it sets out language which is open to wide interpretation and in fact does not close the loophole on the conflict of interest.

The standard which I have tried to address, as a result of the discussion in the committee, will set up a standard sufficient to cause a conflict of interest in any business involved with the storage, transportation, et cetera of grain.

The CHAIRMAN. Without objection, the amendment of the gentlelady from Massachusetts will be included in the record at this point.

[The amendment offered by Hon. Heckler follows:]

AMENDMENT OFFERED BY CONGRESSWOMAN MARGARET M. HECKLER, TO COMMITTEE
PRINT AMENDING U.S. GRAIN STANDARDS ACT, FEBRUARY 24, 1976

Page 10, Section 4(b) Strike the following:

(b) No official inspection agency or any member, officer, employee, or stockholder thereof shall have such a conflict of interest, either directly or indirectly, in any business involving the transportation, storage, merchandising, or other handling of grain or use of official inspection service as to jeopardize the integrity or the effective and objective operation of the inspection service performed by such agency."

Insert in lieu thereof the following:

"(b) (1) No official inspection agency, or any member, director, officer, or employee thereof, and no business or governmental entity related to any official inspection agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest sufficient to cause a conflict of interest in any business involving the transportation, storage, merchandising, or other handling of grain, or the use of official inspection service; and no business or governmental entity conducting any such business, or any member, director, officer or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or financial interest sufficient to cause a conflict of interest in, any official inspection agency. Further, no substantial stockholder in any incorporated official inspection agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting, any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official inspection agency."

"(2) For the purposes of this Act a substantial stockholder to stock sufficient to cause a conflict of interest shall be 2 percent or more, or 100 shares or more, of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to another entity if it owns or controls, or is owned or controlled by, such other entity, or both entities are owned or controlled by another entity."

"(c) The provisions of this section shall not prevent an official inspection agency from engaging in the business of weighing grain."

"(2) Substitute the following for section 7 (e) (1) (A) (iv) of the Act as set forth in section 3 of the bills: "(iv) and any related entities do not have any conflict of interest prohibited by section 11 of this Act;"

Mrs. HECKLER. The point of this is to set up a standard which defines conflict of interest and at the same time does not jeopardize what could be a minor holding of stock.

I know that issue has been raised. Mr. Bergland raised the question. But, as a matter of fact, a high percentage of the indictments have occurred among the employees of such boards of trade. In fact, if we were to exempt them from this bill, then we would have virtually no conflict of interest section.

What this does is to move from a vague standard to a more precise—but a realizable one.

Mr. THONE. Will the gentlelady yield?

Mrs. HECKLER. Yes.

Mr. THONE. The Department, within the last week or 10 days, has published in the Federal Register, that which promulgates rules and regulations in this area, one specifically on the conflict of interest.

How does your amendment compare with what the Department is trying to do?

Mrs. HECKLER. Does the gentleman have the wording of the Department's regulations?

Mr. THONE. Mr. Knebel is here, and he wrote it.

Mr. Undersecretary, how does the rule and regulation that you propose compare with the proposed amendment offered by Mrs. Heckler?

Mr. KNEBEL. In general form, we have already adopted most of these things. In fact, in some respects we have gone further than is proposed here now. I believe we have gone beyond the principle, even.

I think that you will find in our regulations, which were presented in the Federal Register of February 12, that we have adopted most of that.

Mrs. HECKLER. I would like to say that that is laudatory and certainly essential in view of the scandals involved in the inspection of grain, but at the same time I feel that we should state our own standard in the bill.

The language of the committee print is vague and ambiguous and subject to interpretation.

This standard sets up—if not the toughest yardstick—a much harder one than the committee print does.

The regulations of the Department would certainly be supportive. I think that they are compatible. This amendment does not contradict what the Department is attempting to do.

It does not leave the question of conflict of interest to interpretation of the suggested agency. It sets out the congressional intent on conflict of interest.

Mr. BERGLAND. Will the gentlelady yield?

Mrs. HECKLER. Yes.

Mr. BERGLAND. I have not had a chance to study your proposition in great detail. But based on what you have said I think that I can support it.

I have one exception: It deals with the issue of what we commonly call boards of trade or grain exchanges. There is an open and competitive atmosphere at all times.

I am persuaded that if an employee, providing the inspection service and working for a grain exchange, were to be biased toward either the buyer or the seller, the competitive forces of that board would be at work; and that employee would not long be at his or her job.

I therefore feel that some provision should be made to take that into account.

I am completely in agreement that where we have a private agency, then we certainly ought to cut off the conflict of interest. There is no question about it.

But I can make the distinction between the private agency which is doing a job for a fee and in which there is no business competition as opposed to a grain exchange where you have on that board—and as members of the exchange—both buyers and sellers of grain.

I am convinced that that exception could be made. I therefore would amend the amendment.

Mrs. HECKLER. Let me say this.

The point that you raise is a valid one. But it offers a difficult problem. The USDA reports that 22 licensed inspectors and samplers have been indicted. Ten of these had been working for the public exchanges or boards of trade. Of the 111 inspection agencies, 41 are the boards of trade.

Statistics show that the boards of trade have a higher percentage of indictments than the representational percentage of the other agencies.

Forty-five percent of the indicted employees worked for boards of trade. By contrast, the boards comprised 36 percent of the inspection agencies.

So, if you exempt them, then you will probably exempt the largest group of offenders.

I cannot quite resolve that. I am open on the subject, but to create that exemption destroys the purpose of going to the question of the conflict of interest.

Mr. BERGLAND. The indictments to which you allude are indictments at the export level. We had tentatively decided to preempt them.

The question of boards of trade being in the inspection business, applies only to those which would be licensed to render a service on the interior locations.

As far as I know, at least, there are no problems there. There have been investigations.

Mrs. HECKLER. There have been no indictments there?

Mr. BERGLAND. I am not aware of any allegations, even. There may be some, but I am not aware of them.

They have not been disclosed to date.

This is an entirely different breed of cat, if I may use that expression.

I would like to offer an amendment that reads:

Notwithstanding the foregoing provisions of this subsection, the Secretary may designate a board of trade, chamber of commerce, or grain exchange as an official inspection agency if he determines that any conflict of interest which may exist between the agency or any member, officer, employee, or stockholder thereof and any business involving the transportation, storage, merchandising,

or other handling of grain or use of official inspection service is not such as to jeopardize the integrity or the effective or objective operation of the inspection service performed by such agency.

Mrs. HECKLER. You are going back to the language of the committee print, are you not?

Mr. BERGLAND. I don't think so; this would authorize the Secretary to approve the board of trade.

As I read your amendment, you would systematically preclude a public board of trade from contracting to provide an inspection service.

This would allow certain circumstances under which the Secretary could provide for that arrangement.

Mrs. HECKLER. At the same time you don't limit the authority of the Secretary to designate those areas in which there have not been indictable offenses.

I would be amenable to an amendment which would allow the boards of trade to operate in those areas.

The offenses have, nonetheless, involved the employees of the boards of trade at the export points, as you pointed out. This would be allowed under the language of your amendment.

The CHAIRMAN. Will the gentleman yield?

Mr. BERGLAND. The lady has the time.

Mrs. HECKLER. I will yield.

The CHAIRMAN. Would an official inspection agency include a State under this amendment?

Mrs. HECKLER. I think so.

The CHAIRMAN. One of the things that concerns me is the scope of your amendment.

Upon reading it quickly, I think it prevents the ownership of any stock in firms relating to the transportation, handling, or merchandising of grain by any member, director or officer, or employee of an official inspection agency.

If the official inspection agency is the State of Washington, for example, and if any employee of the State of Washington has stock in entities which deal in the transportation, handling, or merchandising of grain, would that constitute a violation of the standard set forth here?

Mrs. HECKLER. The person would have to have substantial ownership. According to the wording of the amendment, it would be 100 shares or more; or 2 percent or more of the voting stock of the corporation.

The CHAIRMAN. Suppose someone in the Department of Agriculture or an employee of a State which administers the grain inspection service owns a family corporation which has a warehouse.

He would own a substantial share of the stock of that business entity.

Would your amendment make the entire State system subject to the conflict of interest section?

What concerns me is this. Where we have an entire State, which serves as the official inspection agency, because of the broad scope of your amendment, you could prevent anybody and everybody in the State government from holding stock whether they are involved in inspection or not.

Mrs. HECKLER. The penalty would be revocation, but it would go to the individual and not the State.

I think that one of the problems that you are addressing is that there is too much crossownership. That is the whole point of the conflict of interest provision. There are secret holdings. They are benefiting in ways that are destroying the system.

Mr. JOHNSON. Will you yield?

Mrs. HECKLER. Yes.

Mr. JOHNSON. It seems to me that your amendment would prevent the inspection by country elevators in Colorado.

I guess that this is what Mr. Bergland is talking about.

Mrs. HECKLER. Is this a board of trade?

Mrs. JOHNSON. They have a private system. The people in the elevator business are the inspectors. It works very well. There have been no problems.

It seems to me to add another burden of inspection which will mean delays and bother to people.

It simply doesn't seem justified.

I am talking about the interior points.

Now, people who live on the coast of the country are not more dishonest than those who live in the interior, I don't believe.

Mrs. HECKLER. I think the conflict of interest is one of the central problems in this whole piece of legislation. I think Mr. Bergland has raised some valid points.

The boards of trade at the export points are the offenders, and their employees are.

It is a question of how you develop integrity and confidence in the system. If there is stock ownership and the owner of the stock is also the inspector, then you have the inspector as the judge and jury.

Who knows where the system breaks down?

I think that the scandalous conduct of the whole program is crying out for reform. I don't like to federalize. I am looking for another means of attaching a high standard of performance to this.

The CHAIRMAN. Because this is an extremely important amendment and one that is necessarily complex in its language, would the gentlelady object to our reserving this issue as the first item of business tomorrow? This will give the professional staff and the Department the chance to confer and to establish exactly what reach the amendment would have.

Mrs. HECKLER. That will be fine.

The CHAIRMAN. I recognize Mr. Fithian.

Mr. FITHIAN. Mr. Chairman, I am not sure that it is propitious that we take up the amendment which I now would offer on the weighing section. If it pleases the Chair, then we could distribute these and discuss them. I doubt that we could get a vote at this point, inasmuch as we have dropped below a quorum; but we might start with the discussion.

The CHAIRMAN. That would be a useful approach. I would like the staff to pass out the amendment on weighing.

I do want to recognize the distinguished ranking minority member, who would like to make a statement before we adjourn for the morning.

Mr. Grassley, do you have a question?

Mr. GRASSLEY. Mr. Johnson's question to Mrs. Heckler and his point on the local elevator, reminds me of the concern that I have brought out continually throughout the hearings that were held on this bill last fall.

I thought this was substantially answered to my satisfaction. We were not thinking in terms of this legislation involving the transaction where the farmer makes an immediate sale to the local elevator.

We were talking in terms of this legislation governing that transaction. Now, have we gone to the point in this legislation where it will affect and govern that initial sale?

The CHAIRMAN. There is nothing in the law at this time that requires the inspection to be conducted in transactions between a buyer and a seller at a given point.

This provision which Mr. Fithian has distributed would affect the weighing requirements and would place some responsibility on the Secretary to administer the weighing operation.

It has an indirect impact on the seller at the country elevators.

Mr. GRASSLEY. I was speaking of Mrs. Heckler's amendment and Mr. Johnson's comments on that amendment.

The CHAIRMAN. Mrs. Heckler's amendment does not itself directly affect the local elevator. It does, however, affect inspection agencies that may exist at inland points, as well as the export points.

Mr. THONE. Will the chairman yield?

The CHAIRMAN. Yes.

Mr. THONE. Mr. Grassley, we had a Doctor Hill brief us the other day. He is an instructor at the University of Illinois.

Mr. Findley says that Doctor Hill is a good man. He impressed us as being a tremendously able man in this field. He is dedicated and has dedicated the last 2 or 3 years to some studies on this with grants which he received from the Ohio State University.

I asked him if we fully implemented the GAO report through phase 3, then what effect this would have on the country elevator out there in Nebraska.

He said that it would most definitely affect it.

I told him that I didn't understand it. I had asked GAO several questions. Their answer was in the negative.

He said that he was sitting in the audience, and he said that he did not agree with GAO. He thinks that if we fully implemented the phases 1, 2, and 3, then we would have the federalization coming to the country elevator.

That does not conflict with what Mr. Foley said, but it enlarges on it.

The CHAIRMAN. Mr. Fithian, would you like to briefly explain your proposal?

Mr. FITHIAN. Thank you, Mr. Chairman.

This is a new part to the basic act, or it could be a new part to the basic act.

I have read very quickly the much more lengthy amendment which has been drafted by the staff. I am not averse to the dealing with that as perhaps an alternative.

I have this exception. As I read the committee staff amendment—which I take it may be drafted from something that the Senate has worked on—it is permissive, rather than mandatory throughout.

I believe that, given the problem of short-weighing, which when done is so far on down the stream of commerce that compensation cannot be made to the farmer, I would like to see this mandated.

I understand it works this way. In the erroneous weighing, hopper cars are loaded at Dubuque, Iowa—and weighed at a certain amount.

When it arrives at the terminal port, it is weighed. If the weight is different, then it is bucked back through the railroads to the elevator.

The country elevator is unable to then dock the farmer per se because it was weighed at his elevator.

What actually happens in fact is this. Over a period of years the country elevator operator realizes that he must consistently—or at least frequently—take it on the chin in the matter of shrinkage.

So the net effect is that the short-weighing, which occurs at the terminal port, is bucked back a shorting or a dockage of the railway shipment which is advanced to the country elevator; and it results in the country elevator simply averaging out what it costs him to keep up with the differing weights between his elevator and the port terminal.

This is the net effect.

It reduces the price that he pays to the farmer. So it is exactly the same as if the person erroneously weighing it at the port terminal took the money directly from the farmer.

It has the same effect.

I think that we ought to mandate a uniform weights standard throughout the country.

I think those standards ought to be drafted by people in the Department of Agriculture who are knowledgeable on such things. I think that then we would work through a system whereby our entire grain system uses the Federal weights provisions. It will take some time to get there, but I think that rather than making it optional with the Secretary, that it ought to be mandatory.

MR. POAGE. Will the gentleman yield?

MR. FITHIAN. Yes.

MR. POAGE. Just what will this do to my public weighers?

We have an office in the State of Texas, known as the public weigher. He is elected by the people.

He has the authority to weigh almost any agriculture product. He will give you a certificate as to the weight.

Certainly I am not going to consider that what you are doing is not going to affect him. I am going to consider it. It is not beyond possibility that you may wipe him out.

There are four in each county, so there are nearly 1,000 of them in the State. What do I tell them?

MR. FITHIAN. Mr. Poage, I would suggest that you simply tell them that they can continue in the public weigher position——

MR. POAGE. They operate under the constitution.

MR. FITHIAN. That is fine. They can continue to do so, so long as the scales and the operations that they use come up to Federal standards.

MR. POAGE. I don't think so.

You say here that he cannot do it unless such jurisdiction is enforcing equivalent procedures under its laws pursuant to a cooperative agreement under subsection (c) of this section.

There is not one of them that is operating under subsection (c) of this section.

Mr. FITHIAN. There has been a typographical change. It should read subsection (d).

Mr. POAGE. They are not under (d) either.

Mr. FITHIAN. It will not be an insurmountable task for the Secretary to do this.

If you follow this with the page 14 of the committee print and if you look at line 15 of the committee print on page 14, then you will see this.

It deals with a cooperative agreement which the Secretary may make with a State. That would be Texas.

So, there would be nothing in here that would impact necessarily adversely on the public weighers in Texas.

Mr. POAGE. It may be a good provision, but I think it does wipe out our constitutionally established office.

Mr. BERGLAND. Will the gentleman yield?

Mr. FITHIAN. Yes.

Mr. BERGLAND. The gentleman's proposition is limited to the grain that moves in interstate or foreign commerce, is that correct?

Mr. FITHIAN. Yes.

Mr. BERGLAND. Grains that are loaded at some point in Texas or Minnesota and are off-loaded within the same State, are not affected by this are they?

Mr. FITHIAN. No, not in any way.

Mr. BERGLAND. The Secretary would be obliged to establish rules governing weighing and apparently guarantee the sanctity of a weight ticket, is that correct?

Mr. FITHIAN. That is correct—for interstate and foreign shipments.

Mr. BERGLAND. I am sure the gentleman has thought this through and I am looking for help.

Assume for a moment that a unit train of grain was loaded in Minneapolis and bound for a port in the Gulf of Mexico.

I am told by shippers that when the grain is off-loaded that it is usually short by some modest amount—but it is short nonetheless.

They get into a hassle as to whether it was faulty weighing at the loading or the off-loading point; or it leaked off the cars or whatever.

How would the gentleman's proposition propose to remedy this matter?

I grant you that it is serious. We need to address it.

I am for establishing a weighing principle. But I would like to establish some history here.

Have you any idea what might be done?

Mr. FITHIAN. I concur. The gentleman has put his finger on the central problem. I doubt that there is anything short of Heaven that has the perfect system.

But I think that if we put any trust in the Department of Agriculture to draft weighing regulations or procedural regulations for weighing, then I have a firm feeling that we will come up a little closer at the terminal port to what it weighed when it left the origin point.

Mr. BERGLAND. Is there any Federal law now on weights?

Mr. FITHIAN. I refer to counsel for that.

Mr. BOR. The only Federal rule that applies on weights is that if a warehouse is licensed under the U.S. Warehouse Act, then the person who performed the weighing at the Federal warehouse has to be licensed by the Department of Agriculture.

But they do not set out standards for the determination of how and what the weighing procedures will be, nor do they carry out supervision of the weighing process in any way.

Mr. BERGLAND. Do all States have an agency that tests scales from time to time?

Mr. BOR. Most of the States provide for the testing of scales through some State agency. The problem which frequently occurs relates to the weighing process. The issue which was addressed to the GAO report involved problems that occur in connection with the weighing process where sometimes after grain is weighed it is really not discharged onto the conveyance or otherwise in the elevator where it is supposed to come to rest.

There are some other problems which arise in connection with the weighing process and which are not now subject to Federal regulations and control.

Mr. BERGLAND. So, if a shipper in Minneapolis sends grain to the Gulf of Mexico and has a complaint about weights, then he has no recourse in the courts? There is no place to which he can turn and be granted a legal remedy?

Mr. BOR. Well, he has recourse in a private cause of action against the person who shipped him the grain. There is a considerable amount of litigation that has arisen between receivers of grain and railroad carriers on claims for loss and damage have been filed against the railroad carrier because of shortages.

Mr. BERGLAND. This would be in a civil court where he could cover for losses only?

Mr. BOR. That is correct.

Mr. BERGLAND. There is no criminal violation involved?

Mr. BOR. Well, if you can establish that somebody has diverted grain to his own account, then there are criminal statutes under State laws under which redress could be obtained.

It is the same thing as stealing any type of private property. The criminal laws of the State would apply.

Mr. BERGLAND. Thank you.

The CHAIRMAN. The meeting is drawing to a close. Mr. Fithian's proposal has been distributed.

An amendment to be offered by Mr. Bedell with respect to the grain standards study has also been distributed and each of these will be considered following the consideration of Mrs. Heckler's amendment tomorrow.

If there are no further urgent matters to come before the committee, it will stand adjourned to meet at 10 a.m. tomorrow morning.

At that time the Chair, before recognizing Mrs. Heckler, will recognize Mr. Wampler for a short statement.

The Chair advises the members that the budget study group will meet this afternoon in this room.

The committee stands adjourned.

[Whereupon, at 12 noon the committee adjourned.]

The first of these is the fact that the
 number of persons who have been
 killed in the recent war is
 estimated at 1,000,000. This is
 a very large number, and it is
 not surprising that the public
 mind is greatly affected by it.
 The second fact is that the
 number of persons who have been
 wounded is estimated at 2,000,000.
 This is also a very large number,
 and it is not surprising that the
 public mind is greatly affected by it.
 The third fact is that the
 number of persons who have been
 killed in the recent war is
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U.S. GRAIN STANDARDS ACT OF 1976

WEDNESDAY, FEBRUARY 25, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Mathis, Bergland, Bowen, Rose, Litton, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, D'Amours, Wampler, Sebelius, Thone, Symms, Madigan, Heckler, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Gene Moos, staff analyst; John M. Lindley, Glenda Temple and Susan Bell, staff assistants; James A. Culver, staff consultant, Subcommittee on Dairy and Poultry; Leighton Lang, staff consultant, Subcommittee on Oilseeds and Rice; Alan Gray, staff consultant, Subcommittee on Livestock and Grains; Leon Geyer, staff consultant, Subcommittee on Domestic Marketing and Consumer Affairs.

The CHAIRMAN. The Committee on Agriculture will come to order. I am advised a quorum is present. We meet for further consideration of amendments to the Grain Standards Act.

The first matter to be taken up today was to have been the amendment of the gentlelady from Massachusetts. Since she is attending another meeting, we shall proceed with an amendment of the gentleman from Indiana, Mr. Fithian.

Before proceeding with amendments, however, the distinguished gentleman from Virginia would like to be heard.

Mr. WAMPLER. I have a short statement I would like to read into the record, Mr. Chairman.

I wish to express my interest in preserving those private and State agency aspects of the present grain inspection and weighing services which currently are working fine in many States and localities.

Mr. Mason Carbaugh, Commissioner of Agriculture in my own State of Virginia, testified before this committee that as to grain loaded in Hampton Roads ports, he was "satisfied that the quality and weight specified were loaded aboard ships."

The Virginia Department of Agriculture and Commerce has been the only agency providing grain inspection in Virginia since 1960 and has generally received praise—not criticism—for its work.

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Mr. Bledsoe, Commissioner of Agriculture, State of Washington, has also been to visit many of you, as he has me, and from all reports the designated State agency inspection program in that State is operating extremely well.

Meanwhile, Mr. Bergland has offered an amendment to Mrs. Heckler's pending conflict-of-interest amendment that would exempt trade groups because he considers that the board of trade type inspection agencies in his own State of Minnesota are self-cleansing and have no history of misgrading or false weighing. I believe Mr. Thone has indicated in the past that that is generally true in his State and that he generally agrees with Mr. Bergland's self-cleansing concept.

Mr. Jack Knebel, Under Secretary of Agriculture, acknowledged yesterday in the course of our meeting that the Department has not preformed as well as it should have in the past in administering its grain inspection supervisory functions. I commend Mr. Knebel for his candor.

The GAO report bears out Mr. Knebel's statement, for running through its report are instance after instance where the supervision of private inspectors or agencies was found wanting in some respect or other, such as training, storage container inspection supervision, et cetera.

On the other hand, while the amount of grain exports have approximately quadrupled in about the last 7 years, the number of USDA employees supervising grain inspection has remained the same. Moreover, those USDA grain graders so employed, according to the GAO report, were spending more and more time on inspection appeals and the voluntary inspection of other commodities such as rice.

However, as Mr. Knebel stated, the Department is moving quickly to improve its supervision. The USDA obtained \$5 million in funding for additional supervisory personnel and will have hired over 200 new employees by March 15, 1976.

The USDA has also issued proposed regulations toughening its denial of inspection, audit and other provisions, and it has requested all grain exporting firms to enter voluntary affirmative action programs to insure improved receipt by foreign grain buyers of the grade and weight that was certified to them.

If we go the route of phase III of the recommendation of the GAO report to federalize grain inspection at minor inland terminals and country elevators. I fear we will be dismantling a grain inspection system at interior points in this country that has served us well for nearly 75 years. The cost of federalizing the inspection and weighing of grain by putting State agencies and trade associations out of business will cost millions of dollars—perhaps as much as \$75 million.

Who will bear the cost? The producers is the answer. Even if we assume some of the cost in the Federal budget because there is a general Federal interest in grain inspection and foreign sales—some suggest 15 percent of total costs—future years may see more and more of that cost moved onto producers. It could easily, in my opinion soon exceed 1 cent a bushel, and where the cost stops would probably be determined by bureaucrats, not by the producers who would have to pay for it.

Mr. Chairman, I understand that Mr. Sebelius has suggested that before we legislatively put out of business designated State inspection

agencies or designated trade inspection agencies, we should visit some of those agencies in the Midwest—Kansas, Minnesota, et cetera—or the Far West—Washington—so that we may personally evaluate their performance.

I concur wholeheartedly with Mr. Sebelius and urge you to give strong consideration to his suggestion before we inadvisedly dismantle at the interior and other points what appears to be a good program.

I have a copy of the letter from Mr. Sebelius to you, Mr. Chairman, which reads as follows:

This is in regard to the grain inspection bill. I know that you feel it is terribly important that the committee deal with the true facts on grain inspection, and I certainly agree with you.

In view of this, do you feel that a tour of selected state inspection systems by the committee would permit a more balanced exposure of the overall grain inspection process prior to final committee markup of the bill? I believe that certain sound operating state inspection systems like those in Kansas, Minnesota and Washington, for example, deserve more careful scrutiny before the committee undertakes legislation to abolish them by total federalization of grain inspection.

I hope you will be amenable to my bringing up this proposal at the next committee markup session.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Wampler.

Mr. Fithian, you are now recognized for 5 minutes in support of your amendment.

Mr. FITHIAN. Do I understand, then, we are passing over the conflict of interest amendment?

The CHAIRMAN. Yes. As I mentioned a moment ago, Mrs. Heckler has been detained in another meeting and is not able to be here this morning.

Mr. FITHIAN. Thank you, Mr. Chairman.

I have only recently, upon arrival at the committee yesterday, been able to review a more extensive provision drafted by counsel with regard to weighing. In a moment I shall ask unanimous consent to substitute that document for the amendment.

Let me say, first, that what I am hopeful we can achieve in the committee is a situation in which the USDA personnel shall, rather than may, establish the inspection procedures at all export terminals and shall supervise the actual weighing of grain at the export terminals.

As our distinguished colleague from Virginia, I am opposed to the procedure whereby we might, by one means or another in the committee, arrive at a situation where the Department of Agriculture would have to hire the people to do the weighing at every country elevator across the Nation.

What I would like to achieve, and we need some discussion on this, is the Federal supervision, and directly so, of weighing at the export terminals, the USDA establishing weight standards for the country but to permit the Department of Agriculture to contract by cooperative agreement or otherwise with the many fine State organizations which I believe are in existence and local organizations and others which they might deem satisfactory.

However, I would hold to the concept we ought to have one national weighing standard and we ought to work toward that.

Perhaps the instrument which Mr. Bor and the staff have prepared would give us the first major step in terms of what we are trying to achieve.

I am reluctant to simply permit at the discretion of the Secretary whether or not the system of weighing shall be implemented.

I think we have to go further than that in terms of establishing what we are trying to do here, Mr. Chairman.

Those who ship out of the Midwest all seem to have roughly the same experience, and that is on a consistent basis the barge or the hopper car does not weigh as much at the gulf port as it does in Iowa, Minnesota, et cetera. I think this is of such long standing that we should not overlook it while we are writing the basic legislation to remedy the grain inspection standards for the country.

I think it is very, very important that whatever legislation comes out of this committee makes a very major step forward in terms of grain weighing because, just as you can cheat the farmer if you don't grade his grain right, so you can cheat the farmer if you do not weigh his grain right. It turns out to be dollars and cents to the producer.

Having said that, I would ask unanimous consent that we substitute for consideration here on the weight section that draft which Mr. Bor and the staff have put together, and with two or three major changes.

Might I ask, do you have copies of this available?

Mr. GRASSLEY. Does this do away with the problem that was in your original draft? I know it is your intent to regulate and have Federal supervision of interstate and foreign commerce grain. But for all practical purposes there is no way, when I sell a kernel of corn to the New Hartford elevator, that they will know where that corn will be used, whether locally or in France or in some other State.

The way your amendment was originally drafted you will have Federal regulation of all grain sold any place in this country because for all practical purposes there is no way you can separate that.

I know that was not your intent but that is the final outcome.

Mr. FITHIAN. I appreciate my colleague's comment. I think a careful legal analysis of the amendment I presented yesterday leads me to conclude that that is the way it would be interpreted, and that is why I am substituting the committee draft for my own.

Mr. SYMMS. Reserving the right to object, Mr. Chairman, I would like to ask the gentleman from Indiana whether he can tell me the additional number of Government employees it would take to suit his amendment. I thought there was estimated earlier some 1,300 people. Is that correct? Have you asked the Department yet?

Mr. FITHIAN. I have not yet had an opportunity to ask the Department that. I cannot very well answer the gentleman.

However, I think it is the sense of this committee that we are going to go to a Federal inspector system only at the export terminals, and therefore people will be on hand to implement other aspects of this bill we are now working on. It seems to me they would also be on hand to supervise and see that the weighing was done.

Mr. SYMMS. Further reserving the right to object, I am not so sure that is what the committee is doing. The problem seems to be mostly in New Orleans. We do not have that problem in Portland, Oreg., and Seattle. In Idaho we have private inspection which works very well.

In the State of Washington they have the State inspection service and some private which is working well.

I am not too sure we want to do away with the whole concept as it has worked. That is why I hate to object to the gentleman's request, but I would like to know more about what this will cost.

Did the Department give you any figures? We start talking about federalizing all the weighers. Then, as you say, making an awfully big step.

The CHAIRMAN. At this point it would be well to insert the language of the amendment being discussed.

[The amendment submitted by Mr. Fithian follows:]

WEIGHING—OPTION NO. 3

SEC. . Notwithstanding any other provision of law.—

(a) The Secretary shall cause the supervision of weighing of all grain received at and shipped from (export port locations) (export elevators) to be performed by authorized employees of the Department of Agriculture.

(b) The Secretary is authorized to require the supervision of weighing at any location other than those described in subsection (a) to be performed by employees of the Department of Agriculture whenever he determines it necessary to meet the objectives of this Act or to provide for such supervision of weighing to be performed by a State or local governmental agency under procedures equivalent to those prescribed for employees of the Department of Agriculture pursuant to a designation of the State or local governmental agency made in the manner provided for under subsection (c).

(c) The Secretary may provide that the weighing and the inspection and testing of scales at locations described in subsections (a) and (b) shall be performed by authorized employees of the Department of Agriculture or by State or local agencies or other persons designated by the Secretary if (i) the agency or person shows to the satisfaction of the Secretary that it has adequate facilities and qualified personnel for the performance of such functions, (ii) will conduct such training and provide such supervision of its personnel as are necessary to assure that they will provide the service in accordance with this Act and the regulations and instructions thereunder, (iii) will not charge fees that are discriminatory or unreasonable, (iv) does not have a conflict of interest prohibited by section 11 of this Act, (v) will maintain complete and accurate records of its organization, staffing, and operations and such other records as the Secretary may require by regulation, (vi) will comply with all provisions of the Act and the regulations and instructions thereunder, and (vii) meets other criteria established in regulations issued under this Act relating to the performance of such functions. Designations made pursuant to this subsection shall be subject to the same provisions as designations for official inspection agencies under sections 7(g) (1), (3) and (4).

(d) The Secretary is authorized (1) to investigate the weighing and the certification of the weight of grain shipped in interstate or foreign commerce, (2) to require by regulation the maintenance of complete and accurate records of the weighing of such grain for such period of time as the Secretary determines is necessary for the effective administration and enforcement of this Act, and (3) the Secretary shall prescribe by regulation the standards, procedures, and controls for accurate weighing and certification of weights of grain including safeguards of equipment calibration and maintenance, at locations specified in subsections (a) and (b) of this section.

(e) No person shall weigh or state in any document the weight of grain determined at a location where weights are required to be supervised or the weight or testing of scales performed as provided for in the foregoing subsections of this section except in accordance with the procedures prescribed pursuant to such subsections. No person shall use any scales which have been disapproved by the Secretary or a State or local government agency or person designated by the Secretary.

(f) The provisions of this section shall not limit any authority vested in the Secretary under the United States Warehouse Act (39 Stat. 486, as amended, 7 U.S.C. 241 *et seq.*).

(g) The representatives of the Secretary shall be afforded access to any elevator or warehouse from which grain is delivered for shipment in interstate or foreign commerce or to which grain is delivered from shipment in interstate or foreign commerce and all facilities therein for weighing grain.

(h) If the Secretary determines that any person has violated the provisions of this section or any regulations promulgated thereunder, the Secretary may, pursuant to the procedures authorized in section 10(c) of this Act, refuse such person official inspection under this Act and the services provided for under this section for such period as he determines necessary to effectuate the purposes of the Act and assess against such person a civil penalty of not to exceed \$50,000 for each such violation.

(i) The Secretary shall, under such regulations as he may prescribe, charge and collect reasonable fees to cover the estimated costs to the Department of Agriculture incident to the performance of the functions provided for under this section. Such fees shall be deposited into the fund provided for under section 7(i) and shall be available without fiscal year limitation for the expenses of the Department of Agriculture under this section."

Page 3, immediately after line 7, insert the following :

"(w) The term 'supervision of weighing' means the supervision of the weighing process and of the certification of the weight of grain, and the physical inspection of the premises at which the weighing is performed to assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance represented on the weight certificate.

Mr. THONE. Will the gentleman yield?

Mr. FITHIAN. I would be happy to yield.

Mr. THONE. As I understand your amendment, and I just got here and I apologize for not having studied it, you are not talking about federalizing the weighing. You are giving the USDA supervisory authority at the export location, both inbound and outbound.

Is that correct, or do I misread it?

Mr. FITHIAN. Paragraph (a) at the top of page 1 would, in fact—

The CHAIRMAN. If I may, I should like to take a moment to clarify the existing parliamentary situation. The gentleman from Indiana was recognized yesterday to discuss an amendment which he proposed to offer today.

At this juncture the gentleman is recognized for the purpose of offering either the amendment he discussed yesterday or the amendment which has been placed before you today.

If he wishes to offer the substitute, it would be in order. I shall recognize the gentleman for discussion.

Does the gentleman wish to offer the amendment placed before us?

Mr. FITHIAN. I do wish to offer the amendment which has just been passed around.

The CHAIRMAN. The gentleman is recognized for 5 minutes. He can now yield to any member he wishes.

Mr. FITHIAN. Replying to my friend from Nebraska, I think the crux of the amendment with regard to the export terminal inspection or weighing facility, is in the first four lines of the amendment.

Mr. THONE. I am correct in reading it that you are authorizing only the supervision by USDA. Am I correct?

Mr. FITHIAN. That is correct.

The Secretary shall cause the supervision of weighing of all grain received at and shipped from export locations to be performed by authorized employees of the Department of Agriculture.

Therefore, it is the supervision of it which is the key to the question.

Mr. THONE. If you would yield further.

Mr. Bor, you seem to be disagreeing. Are you disagreeing?

Mr. BOR. The way this amendment is worded, it requires that the Federal Government supervise the weighing of all grain that is received at and shipped from export port locations.

Mr. FITHIAN. That is correct.

Mr. BOR. With respect to locations other than at ports the Secretary would have the authority to require supervision of weighing to be performed either by the Federal Government or by State agencies through designations made by the Secretary.

Mr. THONE. I think that is what Mr. Fithian said.

Again from the short trip we had down in New Orleans—and again, Mr. Bedell or Mr. Harkin and Mr. Wampler and Mr. Melcher, you might join in on this—the consensus down there was that grain weighing should be coordinated with sampling. If the same employees can supervise loading, sampling, and weighing, I do not see that the concern expressed by my good friend from Idaho is totally justified.

Would there be this tremendous extra cost, Mr. Galliard?

Mr. Chairman, can he answer?

The CHAIRMAN. Yes; we would like to have Mr. Galliard's advice on this matter.

Mr. GALLIART. I defer to Mr. James Lauth, director, Transportation and Warehouse Division, Agricultural Marketing Service.

Mr. LAUTH. I think to some extent that there can be coordination between weighing supervision and sampling, but for the most part it is the whole weighing process which needs to be supervised. You have to be sure that the container which arrives, whether by barge, truck, or rail car, is completely empty.

Then you have to be sure that the grain from that container, the barge or the rail car, gets to the scale, that it goes into the pit, and that none of it is lost at that point, and then that it gets to the scale, the car, and that it is clean and empty, that that is weighed correctly, and then punching the right amount of weight on the scale ticket.

The same process would have to occur on the outbound weighing, that is, you have to be sure that the grain through the spout and conveyor is getting to the vessel into which it is supposed to be getting.

Mr. THONE. I am using Mr. Fithian's time. Are you saying the same people could or could not do this job?

Mr. LAUTH. To some extent they could.

Mr. THONE. Most of them, couldn't they?

Mr. LAUTH. I don't think so because the people in the weighing process cannot be doing something else at the same time. To some extent if you can use the sampler who is not busy to observe the unloading of the boxcar—

Mr. THONE. I am sorry to interrupt. Do you have an estimate of what this would cost in round figures?

Mr. LAUTH. An estimate of the cost in terms of numbers of people, whether we are talking about a Federal system, a Federal-State system, whatever, at the 83 export elevators, a rough estimate of the number of people involved would be about 850 people. That is based on full-time use of their time in supervising the weighing system.

Mr. FITHIAN. Thank you.

Might I just say that unless there is a different version, Mr. Bor, which has been passed out that we should make two changes on page 2 so we are all dealing with the same amendment.

You should have the first three lines of page 2 struck out.

Is that correct, Mr. Bor?

Mr. BOR. Yes.

Mr. FITHIAN. Then at the bottom, the very last word, instead of the word "to," the last word on the page, the words there should read "the Secretary shall." On some versions that might already have been changed. On others it might not.

Thank you, Mr. Chairman.

Mr. MATHIS. Mr. Chairman?

The CHAIRMAN. Mr. Mathis?

Mr. MATHIS. Mr. Chairman, I am somewhat troubled by section (h) on page 4. It seems to me we have given the Secretary the ability to determine whether somebody violates the provisions of this law or any regulation which might be involved in this particular section. It seems he would have carte blanche authority to be pretty strict in his punishment of this individual who might be caught.

Would the gentleman be willing to accept an amendment to this amendment which states that if the Secretary determines any person is knowingly or willfully violating the provisions of this section he be able to slap at \$50,000 fine on the fellow?

Mr. FITHIAN. Your proposed change would be what?

Mr. MATHIS. Add the words "knowingly or willfully," "any person has knowingly or willfully violated provisions of this section."

Mr. FITHIAN. I would just say this to my friend from Georgia—I have no objection to that idea. What I think we should keep in mind is this: Normally a \$50,000 fine in civil penalties sounds like a very great deal of money, and we can know that even a \$500 fine is a deterrent.

When you deal with bargeloads of grain \$500 is nothing at all.

The penalty here, while it may, in comparison to other civil penalties, seem to be stiff, I would urge our considered efforts to try to make the penalty such that it would be felt.

When you deal with tremendous amounts of grain a slap on the wrist will not alter the procedure.

I have no objection to accepting the gentleman's suggestion as to the "knowingly and willfully."

The CHAIRMAN. If the gentleman would yield, counsel has a comment.

Mr. BOR. This particular subsection is quite similar to what is elsewhere in the committee print with respect to civil penalties.

Insofar as criminal penalties are concerned, it is required under other provisions of the bill that it be a knowing violation before a person can be subjected to the criminal sanction.

With respect to the civil penalty, of not to exceed \$50,000 or the refusal of official inspection or of the weighing services, the bill would not require that it be established that it was a knowing violation but rather that a violation of the act had been committed.

Undoubtedly the nature of the offense would be taken into consideration in determining the exact amount of the civil penalty which could be a nominal penalty or a substantial penalty, depending upon the facts of the situation.

If there is a violation of the provisions of the act which deal with official inspection, then there could be assessed a civil penalty of no

to exceed \$50,000 where the administrative law judge and the Secretary would take account of the nature of the offense in determining the amount and the severity of the penalty.

In each case, before the penalty could be imposed there would be an opportunity for a hearing before an administrative law judge so that the person affected thereby would have an opportunity to present his case in an impartial atmosphere.

Mr. MATHIS. Might I inquire of counsel whether that section dealing with the administrative law judge is covered in the bill and in the draft before us now? There is nothing mentioned about that in this section.

Mr. BOR. It is stated under the procedures authorized in section 10 of the act.

If you have the committee print before you, this is on page 20.

Mr. MATHIS. It deals with the administrative law judge procedure?

Mr. BOR. Yes; it states that he shall be afforded opportunity for a hearing in accordance with certain sections of title V of the United States Code. That is the part of the Administrative Procedure Act which gives a person an opportunity for a hearing before an administrative law judge.

Mr. MATHIS. I appreciate the comments of counsel but I still hold the position that even allowing for an administrative law judge to assess this penalty, a \$50,000 assessment is extreme. I would move at the proper time to offer that amendment to the Fithian amendment, Mr. Chairman.

The CHAIRMAN. Mr. Grassley?

Mr. GRASSLEY. I have to make the same comment, Mr. Fithian, which I made in regard to your first amendment. If that is not the case with your substitute amendment, tell me how it differs in this respect—that the end product will be Federal control and regulation in the weighing of all grain.

Mr. FITHIAN. At the export terminals that is correct.

Mr. GRASSLEY. But the rest of your amendment is so broadly written that by administrative discretion, if the Secretary decides he wants to do that he will be able to impose those same rules and regulations elsewhere.

Mr. FITHIAN. I think that the gentleman is basically correct in that this language, if adopted, would authorize the Secretary to impose the same kind of supervision in an area which he deemed necessary because of something we now cannot foresee. I doubt that human frailty is altogether limited to just certain spots in the country.

What we are trying to do here in section (b), (c), and throughout the rest of the amendment is not have to come back to the committee later on if we run into difficulties elsewhere in the country. This would allow the extension of Federal supervision but at the same time not mandate or prescribe that the Federal Government get involved in supervision of weights in other areas than the export terminals.

Mr. GRASSLEY. The whole point of this legislation we are discussing is to guarantee to people buying overseas that they will receive the quantity and the quality of grain they are paying for.

With your amendment we will be getting into domestic exchange of grain, quality and quantity. You would never have had the opportunity to do that without the problems at the export point. There-

fore, why do you grasp onto that opportunity to solve problems which have not been proven to exist and, at the same time, say that the present setup of state supervision of this is inadequate and that we need a Federal takeover in this area?

Mr. FITHIAN. I would remind the gentleman who represents the great State of Iowa that the great State of Iowa is one of the areas where no amount of effective weighing, no amount of effective weighing in Dubuque, can have much effect if they weigh the barges or weigh the hopper cars wrong in New Orleans. It is the Iowa farmer I am concerned about and it is the very fact that systematically weights have been shorted year-in and year-out, weights which have an inland elevator not being the same when they arrive at the export terminal.

It is not because there are problems in Iowa but because there are problems at the weighing and export terminals. It is at the export terminal where the problem arises. It is in the collection, grading, weighing and shipping overseas of grain. Therefore, the problem, while localized in the export terminal, reaches out and takes money out of the pockets of your farmers in Iowa on a regular basis. It is exactly to that that I am addressing this amendment.

Mr. GRASSLEY. And to the extent you are trying to accomplish that at the export points I can agree and say there is a legitimate Federal involvement at that point.

However, when you want to have the long arm of the Federal Government get down potentially into the direct and immediate sale, the first sale from the farmer to the local elevator, then I think we are going to end up causing more problems, as is the case with most Federal involvement in areas of local business, than we are ever going to solve.

I just ask that you take those matters into consideration and that the committee consider these matters as we discuss the amendment.

Mr. FITHIAN. I thank the gentleman.

Mr. MOORE. Mr. Chairman?

The CHAIRMAN. Mr. Poage.

Mr. POAGE. I have nothing at this time.

Mr. BALDUS. Mr. Chairman?

The CHAIRMAN. Mr. Baldus.

Mr. BALDUS. The question I have might be answered by the Department. First of all, I think there is a pattern, as Mr. Fithian says, where barges as they leave the Midwest weigh less than when they get to the export terminal. That has the effect of the elevator somewhat discounting, knowing he has a loss there, so he knows he will pay the farmer less.

If he cannot sell as many bushels as he bought, he has to protect himself somehow, and the way he does it is to pay less.

I can understand easily how you weigh a truck and I can understand how you weigh a railroad car, but I do not understand how they weigh in the barge on one end and how they weigh it on the other end.

Can someone from the Department explain that to me?

Mr. LAUTH. Generally it is weighed as it goes into the barge and as it comes out of the barge.

Mr. BALDUS. Is it a batch or hopper technique?

Mr. LAUTH. A batch or hopper technique, just like a rail car.

The other point you raise is a good one from the standpoint that as far as evidence that the Department has with respect to problems of weighing, most of the problems we are aware of, mainly coming out of the gulf ports, are at the gulf ports.

We are not aware of great amounts of problems at interior points, that is from the farmer to the county elevator or from the county elevator to a terminal elevator.

We have heard several complaints from points in Iowa, arrival at the gulf ports, and so on.

The point could be made that if the export elevator has some kind of Federal supervision or Federal-State or private supervision, some Federal oversight there, that that would take care of that problem resulting from barges arriving or from trucks arriving, and the so-called short weight problem at that point.

Mr. BALDUS. In the explanation before us on page 2 it states it is usually sold on the basis of the weight on arrival.

It states it would be extremely difficult, if not impossible, to establish official weight with automatic scales.

Is this a batch or hopper thing such as you talk about? What does this mean, that it would be impossible to establish official weight with an automatic scale?

Mr. LAUTH. Mr. Tollefson can answer that.

Mr. TOLLEFSON. It is generally one that has 25- or 10-bushel capacity.

Mr. BALDUS. It trips like a hopper?

Mr. TOLLEFSON. It trips when it fills. Ordinarily that type of scale can be thrown off quite easily by a little dust or dirt inasmuch as it is small.

It gives the elevator a pretty good idea of what is shipped out, but for official weights it is not generally recognized and it is not used for buying and selling grain.

Mr. BALDUS. What is a good way, then, for weighing grain which goes out and comes in on barges?

Mr. TOLLEFSON. Most of the grain weighed on barges is weighed at barge terminals and some of them use belt scales which are now claimed to be accurate within about one-half of 1 percent, I think.

Mr. BALDUS. One-half of 1 percent is pretty big on a barge, is it not?

Mr. TOLLEFSON. One-half of 1 percent is about 250 bushels.

Mr. BALDUS. Weighing is more difficult with barges, is it?

Mr. TOLLEFSON. Yes, although they can use the big hopper scales, and many of them do, and then put it onto a belt and load it onto a barge. That is as accurate as weighing onto a hopper car.

Then when it arrives it is taken off the barges and taken on a belt and into a hopper scale and weighed in whatever number of steps it takes to weigh it.

Mr. BALDUS. At a Federal licensed warehouse, careful records are kept as to the number of bushels going in and out. That is another way of checking whether there has been discrepancy in weighing. Is that correct?

Mr. TOLLEFSON. That is correct.

Mr. BALDUS. Where they go at the port terminals, do they now receive that kind of Federal supervision or not?

Mr. TOLLEFSON. There is no Federal law to give supervision even under the U.S. Warehouse Act. All the U.S. Warehouse Act does is

license weighers and they are checked for their competence and ability to weigh. However, we are there only twice a year for an examination. At that time we might observe some weighing but ordinarily there is no supervision in weighing under ordinary circumstances.

The CHAIRMAN. Mr. Krebs and then Mr. Moore.

Mr. KREBS. Mr. Chairman, I believe it is accurate to state that, in the course of the discussion we have had so far regarding this piece of legislation, there has been a certain degree of unanimity—based on three separate votes which were taken—and that is, that activity at the export points should be performed by employees of the Federal Government.

It has also been stated here this morning by those people much closer to this problem than I am—because we grow peaches, plums, cotton, and so forth in my district—that cheating somebody on weighing can be just as detrimental as cheating somebody on inspection of grain.

I am therefore somewhat at a loss to understand how, in connection with this amendment—and I have reference to subsection (a)—the word “supervision” has crept into it. At the proper time, Mr. Chairman, I shall offer an amendment to section (a) of Mr. Fithian’s amendment which would strike the words “supervision of” and which would have the effect of mandating that the weighing be done directly by employees of the Department of Agriculture.

I can see nothing but duplication of effort if we are going to have Federal inspectors supervising the weighing after it has been done by somebody else.

Therefore, if the Chair will at the proper time recognize me for that purpose, I would appreciate it.

The CHAIRMAN. Very well, Mr. Moore, you may proceed.

Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

I believe the committee has sometimes become confused regarding the types of grain inspection in Louisiana.

There is no weighing of grain at export ports that is conducted by the State of Louisiana. The State inspectors of Louisiana do not operate any of the export ports, including the Port of Baton Rouge. They have no connection with it.

I want to simply point that out. To my knowledge there has not been a problem with the State’s weighing or inspection of grain.

Mr. FITHIAN. Those are done by private inspection firms?

Mr. MOORE. Yes. It is a public agency and their employees are public servants, but not part of the Louisiana State inspection division. The rest are purely private.

Mr. HIGHTOWER. Mr. Fithian, I notice in section (b) you provide that the Secretary is authorized to require the supervision which may be performed by a State or local governmental agency.

There is no reference at all to other persons as it is referred to in section (c) where we talk about inspection and testing of scales.

Does this mean that the Secretary could not authorize employees of Chambers of Commerce and Grain Exchange Boards of Trade to perform this service but could contract only with a State or local governmental agency?

Mr. FITHIAN. I would have to defer to counsel on this matter.

Mr. BOR. The way this amendment was drafted it provides, as you indicate, Mr. Hightower, that the supervision of weighing at other locations, if the Secretary wanted to impose Federal standards, can be conducted only by Federal employees or by employees of State agencies.

However, the physical job of weighing, the weighing itself, or the testing of scales, is provided for under subsection (c), and in that subsection provision is made that if the Secretary wishes he could provide that those functions would be carried out either by the Federal Government or by State agencies or by private persons.

Mr. HIGHTOWER. What is the reason for authorizing private people to supervise the inspection of scales but not private people to supervise the weigh-in?

Mr. BOR. One is a rather technical matter. The testing of scales is a rather technical matter. We thought that the more important function, the function of supervising the conduct of weighing, involved the whole process of weighing and would best be provided for in the manner stated in the amendment of Mr. Fithian.

Mr. HIGHTOWER. Thank you, Mr. Chairman.

The CHAIRMAN. If there is no further discussion, the gentleman from Georgia is recognized for the purpose of offering an amendment.

Mr. MATHIS. I move on page 4, line 1, the words "knowingly and willfully" be inserted following the word "has."

The CHAIRMAN. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. MATHIS. I need only 5 seconds. The committee heard arguments earlier. I feel this gives the Secretary or the administrative law judge, as the case may be, too much authority to determine whether a person has been in violation of the act.

I think we should insure that the Secretary is required to make a determination he has knowingly and willfully made this violation and not inadvertently.

I urge adoption.

Mr. WAMPLER. May we have the amendment read again, please?

Mr. MATHIS. I will state that I have not prepared this for distribution.

It inserts the words "knowingly and willfully" following the word "has" on line 1 of page 4.

Mr. WAMPLER. Subsection (h)?

Mr. MATHIS. Yes.

Mr. WAMPLER. Insert "knowingly and willfully"?

Mr. MATHIS. Yes.

Mr. WAMPLER. Thank you.

The CHAIRMAN. Is there any further discussion of the amendment?

Mr. McHUGH. Mr. Mathis, suppose the Secretary determined that someone was violating the regulations through incompetence or a lack of zeal but nothing so gross as to justify a civil penalty?

Should not the Secretary have the right to take away the inspection license, refuse the person official inspection under the act?

In other words, I think what you are objecting to is the ability of the Secretary or the administrative law judge to impose a cash penalty of \$50,000. You feel that should be done only where there is a knowing and willful violation.

Mr. MATHIS. Yes.

Mr. McHUGH. However, what about the situation where it is not knowing and willful but just incompetence?

Should not the administrative law judge or the Secretary have the right to refuse such person official inspection?

Mr. MATHIS. If the gentleman will yield, I think you are eminently correct. The Secretary should have some authority.

As I would imagine, if a person is not competent to understand the provisions and regulations of this section, he should not be in that business anyway, or probably will not be. If he does not have the competence to read the regulations promulgated by the Secretary, he will not be out there.

Mr. McHUGH. Well, if you have an inspector, let's say at an inland terminal, who simply does not follow the regulations very carefully, who is not very cautious and responsible, but he does not reach the point of a willful and knowing violation, which I think is language more associated with a criminal violation as described by Mr. Bor earlier, then under your language this would not subject a person to any penalty by the Secretary, but yet, in order to protect the producers some action on the part of the Secretary should be possible, specifically the suspension of the right of inspection.

I am concerned that under your language the Secretary could do nothing with regard to a person who was simply negligent and did not reach the maximum criterion of willful and knowing violation.

I do not have any language which could correct that but it seems if we adopt your language we will not give the Secretary sufficient authority to suspend the right to inspect for someone who falls somewhat short of that rather maximum standard of willful and knowing violation which we usually associate with something rather severe.

Perhaps counsel has a comment or reaction.

Mr. KELLY. On the question about knowing, it would simply remove the possibility that the first time there was any violation at all that you could prosecute without establishing knowing.

However, when there was a second time, then the knowing would have been established.

I think what Mr. Mathis' amendment aims at is avoiding the possibility of very severe penalty in a situation where there is even minor negligence.

By putting "knowing" in there you can give a company a warning once; then, if it does it a second time, the "knowing" requirement is easy to prove.

Mr. HARKIN. In the years that I practiced law I never liked to instruct a judge. That was always one of the things you never did.

I would like to bring to Judge Kelly's attention that what we are talking about here are civil penalties, not criminal violations or prosecutions, but civil penalties.

I think the gentleman from New York is absolutely correct. You are attaching onto a civil penalty, a civil violation, the standards normally associated with criminal law, violations under the criminal statutes.

Mr. KELLY. Would the gentleman yield further?

Mr. McHUGH. Yes.

Mr. KELLY. That might well be, but \$50,000 sounds almost criminal.

Mr. HARKIN. If the gentleman will yield further, it may be in the courts of Florida but it is not in the courts of Iowa.

Mr. KELLY. Is it a matter of economic levels?

The CHAIRMAN. The time of the gentleman has expired.

The Chair wishes to comment that he certainly understands the attitude of the gentleman from Georgia regarding civil penalties which are rather stiff at the upper end.

Rightly or wrongly, the law is replete with regulatory provisions which permit civil penalties to be assessed when in the opinion of the Secretary any violation of regulations exists.

The purpose, I gather, of these civil penalties is to remove the necessity of proving willfulness or other knowledge of violations as is typically required in criminal prosecutions.

On the other hand, it is easy to see that, if a person conducting weighing inadvertently violates a regulation, it would be a gross abuse of power and governmental authority on the part of the Secretary to assess him a \$50,000 civil penalty.

Yet, if the Secretary moved against consistent patterns of violations by a major corporation, a \$50,000 penalty might be less severe and more appropriate as a penalty.

A denial of inspection services can be a very serious and powerful sanction which, in most cases, would amount to a great deal more than a \$50,000 civil penalty.

I agree in effect that this is a powerful sanction we are giving the Secretary to use.

If, however, we require that the violation be committed knowingly and willfully in order for the Secretary to use this sanction, we will be creating a situation which, to my knowledge, would be unique in the civil penalties area of the various Federal statutes.

Mr. MATHIS. I am not as conversant with this committee print as other members of the committee who have been more diligent in their attendance than I have, but in the criminal section of the bill, section 14, as I read it, we have criminal penalties which say they are prohibited from the general penal statute and shall be subject to imprisonment of not more than 6 months or a fine of not more than \$3,000 or both.

It does not make any sense to me as a lawman who is not a lawyer that we can give the Secretary authority to fine them \$50,000 in one area and upon conviction fine only \$3,000. It seems to me upside down.

Mr. HARKIN. If you would yield.

Mr. MATHIS. I do not have the time; the Chair does.

The CHAIRMAN. It is assumed that the criminal penalties would be exercised against individuals while the civil penalties, in all likelihood, would be assessed against corporate persons more than individuals.

However, the gentleman is correct, that the money penalties are heavier under the civil section than under the criminal section.

In other statutes civil penalties range from \$1,000 to \$5,000 for each instance. These, however, can be multiplied many times. It is always very easy to imagine that the Secretary would abuse his authority by assessing monstrously heavy penalties.

Experience, however, indicate that the Secretary seldom exercises these civil penalties, except in cases where he feels that the circumstances are exceptional.

Yet, the gentleman is correct in saying that it creates a technical problem since the Secretary could assess a very heavy penalty against an individual under this section.

Mr. MATHIS. If the gentleman will yield further, is there a provision in law now which gives the Secretary authority to make this kind of fine applicable in any other case? Does he have authority to impose a \$50,000 fine in any other instance?

The CHAIRMAN. I cannot cite any other instance of a \$50,000 fine. The meat inspection law, however, does provide for civil penalties against abuse.

As a matter of fact, most inspection procedures in which the USDA is involved give the Secretary authority to impose civil penalties.

The enforcement of the civil penalty provision is usually left to U.S. attorneys in their respective areas of jurisdiction.

If the Secretary assesses a civil penalty in a hearing before an administrative law judge and the penalty is not paid by the person assessed, normally the Secretary applies to the Department of Justice for the U.S. attorney to seek collection of that penalty.

Thus, the Justice Department, in effect, has another crack at the case if the U.S. attorney deems the assessment of the penalty to be just. I yield back the balance of my time, which is about to expire.

Mr. BEDELL. If I were assessed a penalty by the Secretary of \$50,000, and I thought that penalty was unjust and improperly assessed, do I have access to a court of law to try to bring it before them to see whether that ruling can be overturned?

The CHAIRMAN. I will yield to counsel on this. I believe, however, that the matter would be subject to review on the basis of substantial evidence on the record as to whether the finding was arbitrary and capricious under the Administrative Law Rule. Is that correct?

Mr. BOR. That is correct, Mr. Chairman.

Mr. BEDELL. Is the answer to the question yes or no?

The CHAIRMAN. The answer is that there has to be a hearing with respect to penalty assessed.

If the hearing results in a finding that the penalty is correctly assessed, then you can appeal the finding of the administrative law judge to the U.S. Court.

However, it is not a de novo hearing. What the trial court and district court looks at is whether there is substantial evidence on the record to justify the finding of the hearing judge.

Mr. BEDELL. All right.

The CHAIRMAN. I do not want to get technical. It is not a preponderance of the evidence but a question of whether there is substantial evidence on the record to show that the action of the administrative law judge and the Secretary did not constitute an arbitrary and capricious action by the Secretary. It is more in the nature of a limited appeal.

At that point if you do not pay, the U.S. attorney would be charged with collecting the actual civil penalty in a Federal court. Moreover, the U.S. attorney need not prove that you violated the particular regulation but that there was an assessment made against you that you did not pay.

It is, therefore, a simple matter of proof for the U.S. attorney.

On the other hand, if the U.S. attorney feels that the Department has not acted properly, he has certain discretion and may not collect the fee.

Mr. BEDELL. I yield back the balance of my time.

The CHAIRMAN. If you would yield for one more comment.

I think these civil penalties have a potential for very heavy abuse if they are improperly assessed and administered by a Secretary or a Department. The records indicate that this threat is grounded in theory rather than in actual practice.

I yield to Mr. Bergland.

Mr. BERGLAND. Thank you, Mr. Chairman.

I have a question of counsel.

Section 13 of the act lists the prohibited activities.

Does that section prohibit the falsifying of weights?

Mr. BOR. Page 25 of the committee print would add to section 13 another subsection which would make it a prohibited offense to knowingly engage in the falsifying of weights of grain shipped in interstate or foreign commerce. This is another item up for consideration by the committee.

Mr. Bergland. Thank you.

Mr. BALDUS. I think what we are trying to do here is trying to give some flexibility so that there would be prosecution and there might not be a penalty which is unreasonable.

We might be able to do that and give the Secretary some flexibility at about the eighth line down, where it states "act and/or assess against such person a civil penalty of not to exceed \$50,000." It seems to me then that the Secretary could deny official inspection for 1 day. He could deny official inspection for a week. He could deny official inspection, period, if a violation were of that magnitude, or he could deny official inspection and levy a fine of \$50,000.

Mr. MATHIS. I think that is already covered. On line 3 it states "The Secretary may." It does not require him to do this. He has the option of doing either one or the other.

Mr. BALDUS. Might I ask counsel whether that is inherent in this?

Mr. BOR. That is correct, sir. Mr. Mathis' interpretation is correct.

Mr. BALDUS. Given that flexibility and understanding, I think that eases my mind.

The CHAIRMAN. Do you have further comment?

Mr. BOR. In your amendment, Mr. Mathis, would you consider just having the words "knowingly violated" rather than "knowingly and willfully"?

The reason I raise the question is that in the criminal provisions of the act the term "knowingly" is used and is not also coupled with the word "willfully." There is a shade of difference from a legal standpoint as between those two provisions.

Mr. MATHIS. I certainly would have no objection. I simply think we need to make it clear and have legislative history make clear we do not want the Secretary coming in and socking a \$50,000 fine arbitrarily.

I will certainly accept that suggestion.

The CHAIRMAN. Without objection the amendment of the gentleman from Georgia will be considered.

Is there further discussion?

If not, all those in favor of that amendment of the gentleman from Georgia will so signify by raising their right hand.

The CLERK. Fourteen.

The CHAIRMAN. Opposed?

The CLERK. Three.

The CHAIRMAN. The clerk will report the vote.

The CLERK. Fourteen ayes and three naves.

The CHAIRMAN. The amendment is agreed to.

The CLERK. Four naves.

The CHAIRMAN. There being fourteen ayes and four naves, the amendment is agreed to.

The Chair will now recognize the gentleman from California, Mr. Krebs, for the purpose of offering an amendment.

Mr. KREBS. Very briefly, section (a), as I understand it, refers only to the export points. As I said a while ago, we seem to be pretty much in agreement that it is at the export points that we need direct Federal involvement.

It is for this reason that I move to amend section (a) by striking the words "supervision of" in the first line of section (a). This amendment would have the result of having the weighing done by employees of the Department of Agriculture, and in my opinion, would save the taxpayers money. I think we will have nothing but duplication of services unless the actual weighing is done by employees of the Department.

Mr. FITHIAN. If the gentleman would yield.

Mr. KREBS. I would be glad to.

Mr. FITHIAN. Might I ask of the Department whether that would substantially alter the figure that you offered earlier this morning, that it would take 850 people if we went to this amendment?

Mr. LAUTH. It would not change the figure. Those people would actually be doing or supervising the weighing, which is basically the same thing.

Mr. FITHIAN. In that event, then, Mr. Chairman, I will be happy to support the amendment of the gentleman from California.

Mr. KREBS. Thank you.

Mr. BERGLAND. Thank you, Mr. Chairman.

I am not sure I heard the Department's statement clearly enough.

Did I understand you to say it will take as many people to supervise the weighing at these export locations as if they did it themselves?

Mr. LAUTH. Yes.

For example, in the State of Washington there is a State law in which they "supervise" the weighing of all inbound and outbound grain at those west coast elevators. Basically what they are doing is doing the weighing itself, meaning more than just watching a scale, more than just punching the weight on the scale ticket. They are also observing and supervising the unloading of cars, the flow of grain into the weighing mechanism and then also supervising or watching the flow of grain into the outbound vessels.

All that considered, the weighing process—and they are called weighers, people doing the weighing of grain at those elevators—my answer to the question before, given that assumption, would be the number of people required to do one versus the other is the same.

Mr. BERGLAND. In other words, if we were to have a State or private weigher in the business with Federal supervision, we essentially double the manpower requirements.

Mr. LAUTH. If you had Federal supervision in that respect or, if you will, oversight over the agency to determine whether or not they were complying with Federal rules and regulations set up for that agency, then there would be substantially less Federal people involved in that type of supervision.

Mr. BERGLAND. From a cost standpoint it would cost less money to have Federal weighing than Federal supervision.

Mr. LAUTH. Cost less money for Federal weighing?

Mr. BERGLAND. If the Federal supervision required a doubling of the personnel, in other words, the State officials will do the weighing and for each State weigher you have a Federal supervisor or—

Mr. LAUTH. You will have a system where you have State people doing the weighing, and then you will have Federal supervisors to supervise each and every one of those people at each and every point of the operation. That will double the number of people.

Mr. BERGLAND. Is that necessary? Do you have to have a Federal inspector watching over the shoulder of a State employee all the time?

Mr. LAUTH. No, not if you are thinking of setting up Federal rules and regulations for the State agency to abide by in the supervising of the weights. In that case the number of Federal people to do that kind of oversight supervision, to assure compliance with the rules and regulations, would of course be substantially less.

We have estimated that if you have a Federal oversight of a State agency or private agency it would take at the port elevators only about 50 Federal supervisors to do it.

The CHAIRMAN. If the gentleman will yield, one of the things which causes some difficulty is the word "supervision" as it pertains to this amendment. Again, I think we should make it clear what that is intended to encompass.

If we are talking about a constant one-to-one overview by an employee of the Department of Agriculture with respect to every weigh-in procedure carried on at every export port or terminal, the Department estimates that this would require something close to 850 employees. Is that correct?

Mr. LAUTH. That is correct.

The CHAIRMAN. If supervision, on the other hand, means setting the standards and conditions under which weighing is to be carried out with only random checking of those procedures by the USDA, the number of employees would drop to 50.

Mr. LAUTH. That is correct.

The CHAIRMAN. The proposal of the gentleman from California requires that the actual weighing operation be conducted by the USDA. Thus we are back to 850 people at a cost of roughly \$16 million a year.

Mr. LAUTH. \$16 to \$17 million a year.

The CHAIRMAN. I think we ought to be conscious of exactly what we are about here. Do we really intend to put the U.S. Department of Agriculture into the weighmaster role at the port facilities?

Is it correct that the USDA does not now exercise any weighing supervision over any terminals except those warehouses licensed under the U.S. Warehouse Act?

Mr. LAUTH. That is correct. In the supervision under the Federal Licensed Warehouse Act insofar as weighing is concerned it is minimal. We do not supervise any agency or anyone who is performing a weighing operation at the Federal license operation. We simply license the man for the purpose of the U.S. Warehouse Act which is to protect storage obligations.

Roughly speaking there is about 60 percent of the export elevators which are federally licensed which——

The CHAIRMAN. Did you say that about 60 percent of the Federal export elevators are licensed under the U.S. Warehouse Act?

Mr. LAUTH. Yes.

The CHAIRMAN. In other words, although the USDA does exercise some limited degree of responsibility under the U.S. Warehouse Act, there is no day-to-day, one-to-one supervision currently.

Mr. LAUTH. That is right. We examine them on the basis of protecting inventory and the deposit of grain.

The CHAIRMAN. Time has expired. I recognize the gentleman from Texas.

Mr. POAGE. It seems to me perfectly clear that under this language some court within 3 months after it is passed will hold that you are going to have to have the Federal Government employ every railroad employee who switches that car in there and gets it weighed because he is taking a part in the weigh-in.

Certainly the man who moves that car in is doing part of that weighing. The engineer, the brakeman, the fireman, all those working for the railroad will have to be employed by the Federal Government.

I think a lot of people want that. On the floor of the House many Members want that sort of thing because they believe that if the Federal Government touches a pile of old rags they will make silk gowns out of them. They believe in Cinderella and they believe in all sorts of these things. If the Federal Government gets involved in these things, then it is all right.

What you are doing here is setting up a monster in the hands of the Federal Government to destroy the least vestige of private initiative in these things. You will have the Government making all the decisions.

I know that the majority, about 10 to 1, voted just yesterday to keep the Government in here.

However, I want to call your attention to what you are doing. You are just as sure as the world providing that at least you will have extended litigation as to how far you will require the Federal Government to employ people who will not do 3 minutes' worth of work but they will have to be paid for a full day. You will get the cost of this thing so high that the weighers and graders will get more out of it than the farmers.

That has been one of the great weaknesses of our whole farm program, that we have always let the people who handle the commodities after they have left the markets make a fortune out of them whereas the man who grew the crop made nothing.

You will get these costs so high, they will all go back on the farmer. You don't mean to tell me that someone else will pay these costs. The farmer will pay all these costs. You will multiply this into the millions.

You will just say that everybody who touches this grain has to be an employee of the Federal Government.

He may work 7 hours and 56 minutes for the Illinois Central Railroad, but you will have to employ him. You have to have the Federal Government employ him if he switches a car in there to be weighed because he then becomes part of the weighing process.

Mr. FITHIAN. If the gentleman would yield.

Mr. POAGE. Sure I will yield.

Mr. FITHIAN. I would indeed be concerned if I thought this is where it is leading.

Mr. POAGE. Look at what happened in the past on every activity where the Federal Government has put its big paw and see where it has gone.

Mr. FITHIAN. My observation, however, is that in the State of Indiana, when I drove my grain truck on to the scale, the person who was weighing it had to be somehow certified by the State but they did not ask for my credentials.

I would believe that the same argument would hold true in the national system of meat inspection, whereas the people who truck it in and handle it and even carry it down the weighing line and even up to the Federal inspector who stands there and runs the scale——

Mr. POAGE. We don't say everybody who takes part in the inspection has to be a Federal employee. The law says nothing of the kind.

It says the Federal Government will have to supervise that. Your amendment just said supervision, but we are now talking about an amendment which will go much further.

However written, your amendment recognized that you went a great deal further when you got beyond supervision. That is why they put supervision in there.

Now it is proposed that it be taken out.

Mr. FITHIAN. I am supportive of the amendment because of the response from the Department that if we really supervise it with one person supervising and one weighing, that it would be duplicative. I believe that is as far as this would go.

Mr. POAGE. Just let me call your attention to one fact. Yesterday I talked to one of the members of the Budget Bureau who pointed out we are now paying more interest on the Federal debt this year than the total GNP of the United States was then I came to Congress. I am not talking about total revenues of the Federal Government but I am talking about the total national production. We are paying out more money this year as interest than the GNP in 1936.

You can just keep enlarging this Federal Government but sooner or later the balloon will bust.

I thank the gentleman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes Mr. Sebelius and then Mr. Harkin.

Mr. SEBELIUS. I had the great urge when Mr. Poage was speaking to say "Amen; right on, brother."

I can find nothing in this amendment or the Fithian amendment which strikes at anything we should be getting ourselves into. We are overreacting to a problem which developed in some of the gulf ports.

First it is subject to supervision of, and then taking that out.

I think it goes so far that we might get to the point where we might put armed guards on these barges which come down the river because of the complaint that the weight changes some where. It is perhaps not in the weighing at all but somebody is pulling the barge ashore or taking something out, or the hopper cars need to have guards. The Government will have to see that the barge gets to the point it is supposed to be.

Then with regard to the scales, we have a State department which goes out and tests these scales. On the third page there is a subject that the scales will have to be inspected by the Federal Government and the weight certified and a need to keep records.

I would ask the gentleman from Indiana—and I know his intentions are honorable—what if the State agency says the scales are off and the USDA says the scales are all right? Where does that leave us in a situation like that?

Mr. FITHIAN. I am not sure I follow the thrust of the question.

Mr. SEBELIUS. The weights and scales are approved by USDA. The State of Kansas has a comprehensive act on this. It goes into all of our stores on a regular and irregular basis. They check the weighing ability and certify them.

Now the Federal Government is in. What if the State says the scales are not right and the USDA the next day says they are all right?

Mr. FITHIAN. I call your attention to the first four words on page 2, where the Secretary is authorized and not mandated to do the job.

If Kansas is doing its usual good job, there is no propensity in the record that the Department of Agriculture wants to pursue getting themselves further involved.

I would also point out that should the Department—let's say Department personnel changes—should the Department really want to expand into this area, in areas of States which are not needed, it would seem to me they would have to do this at the expense of some other activity of the Department because they would then have to proceed to hire additional people, or they would come back to this committee for additional funding.

In either case, if it was felt that was unwarranted, I hope the members of this committee or our successors would be stern enough in our judgment to say it was an unwarranted meddling of the Federal Government.

I am the last person to argue that the Federal—

Mr. SEBELIUS. I would like to reflect that no person can use any scale disapproval by the Secretary or a State or local agency or person designated by the Secretary.

Finally, three times I see here that the Secretary shall under such regulations charge and collect reasonable fees to cover the estimated cost of the Department of Agriculture.

That is exactly what the gentleman of Texas refers to—charge fees, charge fees. He will not charge discriminatory fees but charge fees.

I am afraid we are reacting to something being handled right now and which cannot be solved by throwing more money into it and Federal regulation.

Therefore I not only oppose the amendment just made, but also the Fithian amendment.

The CHAIRMAN. Mr. Harkin.

Mr. HARKIN. Mr. Chairman, in responding to Mr. Poage's remarks, we would not have these problems which have come up on cheating and misgrading and misweighing if the grain, after it left the local country elevators, stayed in a competitive type of system which exists at those country elevators.

The farmer can see the scale. If he thinks they are cheating, he can go to another elevator. But when you have a system in this country where you have five grain companies controlling almost 90 percent of the grain after it leaves those country elevators, then you have problems because there is a monopolistic system.

When you have two grain companies controlling over 50 percent of the grain exported from this country, you have a monopolistic system.

I wish we didn't have to do this. I wish we had a Justice Department which would use the antitrust division which would go after those grain companies and break them up and make them more competitive. If that were so, we would not have these problems.

However, if they are not going to do it, and obviously they are not—they are spending their time looking at the Bell Telephone Co., and that will go on another 10 or 12 years—but if they are not going to do it at the Justice Department and bring back some mode of competition in the grain companies, then I think it is incumbent upon us to do something to protect the farmer—not to hurt the farmer.

I am concerned, as I am sure every member of this committee is, with the fact that the farmer is getting an unequal share of the food dollar in this country. He is getting an unequal share of the amount of money that we are receiving from our exports abroad. That is because we have this kind of cheating and misgrading and misweighing of grain going on.

To get down to the point of this Federal inspector, weighing the grain, we have heard there will be duplication. I take issue with the mention made that it will cost \$16 million or more.

Who pays the people who weigh it now? The elevators pay them.

If we are going to have the Federal Government hire the weighers to be there, we are not talking about all the people who switch the railroad cars and stuff but we are talking about the guy who sits there on the scales and punches that weight card and makes sure that that beam is not put 2 inches out or a half-inch in in order to cheat on the weighing. That is what we are talking about, that one individual right there.

Therefore, we will not be paying any more money. We can assess those charges against those grain companies, make them pay it into the Federal Treasury, just what they pay them right now.

However, don't those people who are conducting that weighing have to be the employees of those grain companies. Again you have that inherent conflict of interest. That is why I support the Krebs amendment.

I think if we just have the supervision then we will get that duplication. However, without the supervision, with the direct weighing at the export terminals, then I think you will not cost the Government one more single penny. You are not going to cost the grain companies any more, but you will be reasonably assured, much more reasonably assured, that you will get an honest weighing of that grain than you are getting today.

I wish I had with me right now, and I expect to have it shortly, at least I will have it tomorrow, documentations of at least one farmer in my district who shipped grain, not to an export terminal but to Cook Industries down in Memphis, Tenn. He took his grain to Omaha.

He got the railroad car sealed in Omaha, shipped it down to Cook Elevator in Tennessee. When it got down there it had a different weight down there. Interestingly enough the car was sealed. Yet when they weighed it in Memphis he got short-weighted.

Then he had to go to Des Moines, file a suit, and go through a big hassle. He finally got his money back from Cook.

I say that happens every day and it happens because they are not competitive. If they were competitive, it would not happen.

I will be glad to yield to the gentleman from Indiana.

Mr. FITHIAN. One additional word. I want to associate myself with the remarks of the gentleman, and add the fact that until and unless we can restore credibility in the system we are paying a lot more every day now than the hiring of 850 employees.

Mr. HARKIN. I agree wholeheartedly.

Mr. MOORE. I want to compliment you on a forceful and well-enunciated point.

In Louisiana, where many of these problems exist, most of the weighing is done not by grain companies, but by the boards of trade, chambers of commerce, Baton Rouge Commission, and other agencies. There is no conflict of interest there.

This is not the grain company doing the weighing, so I must throw your contention out.

Mr. HARKIN. They are still paid by the grain companies. Even though they work for a private inspection agency or a State inspection agency, those inspection fees are assessed against the grain company. They are paying for it and not the State of Louisiana.

Mr. MOORE. I agree, except with regard to your argument that conflict of interest is present: that the board of trade, chamber of commerce or whatever agency is OKing this or bringing about this conflict of interest so as not to lose the business of one of the five grain companies.

That point has not even been insinuated or proven with any kind of evidence.

I can understand your argument, and perhaps even agree with you. In fact I do agree with you; that is, concerning the case of an individual grain company doing its inspecting and grading. But, what I am saying is that when you have a port authority or a chamber of commerce doing inspection, I don't think that the conflict-of-interest argument holds up.

I wanted to mention this for what it is worth.

Mr. HARKIN. One elevator we looked at, and other members can correct me if I am wrong, when they did the weighing of the boxcars

that came in, as I understand it the guy sitting at the scales was an employee of the elevator and he was supervised by the board of trade.

However, the supervisor was not there 24 hours a day seeing that he did not move the beam or cheat a little bit on that weighing process.

That gets back to my individual farmer in my district when it got down to Cook. Perhaps that same thing happened.

The individual we saw at the elevator down there was employed directly by the grain company.

Mr. BEDELL. Will the gentleman yield?

Mr. MOORE. The board of trade is not a grain company.

Mr. HARKIN. The man who punched the certificates was an employee of the grain company. He was being supervised by the board of trade.

Mr. MOORE. That is where I agree with you. I don't think any grain company ought to be involved in that way.

As far as supervision by this board of trade, I agree. That is where the system has not been tight enough.

I point out that I do not think it is valid to say the conflict of interest argument prevails with regard to the boards of trade and chambers of commerce.

I agree with you where an individual company is involved. I will go that far with you.

Mr. BEDELL. I was not at all sure but what there was a 24-hour supervision by the board of trade over the weighing.

Mr. HARKIN. When we went into the weighing room the inspector was with us. When we left he went with us, so he was not sitting there watching weighing.

Mr. MOORE. At the Baton Rouge Port Commission they have 24-hour Federal inspection, but he is not there all the time, either.

Mr. HARKIN. My main argument is the idea it will cost \$16 million more. I just cannot see that happening.

The CHAIRMAN. The red light is not working, but the time of the gentleman has indeed expired. It is the longest timed period I have ever experienced.

The gentleman from Minnesota is recognized.

Mr. NOLAN. I would like to associate myself with the remarks of the gentleman from Iowa as well. I would like to make one observation.

Several members of the committee have made the point that if we leave the system as it is and let normal marketing procedures take care of it and leave it to their own devices the whole problem will be solved. I think that is correct.

However, what kind of a solution is it? The GAO has told us that six foreign buyers have quit buying from us. They are tired of getting cheated and defrauded and shortweighed.

Another 21 buyers said they have refused their sales and are trying to buy from other countries when possible, like soybeans from Brazil.

In other countries such as Japan, they said they appealed 100 percent of all the inspections made by the private companies.

I think what we have to ask ourselves is whether that is the kind of solution we want. I don't think it is.

We have talked here about the cost of Federal inspectors inspecting these grain companies. What are the costs to the American farmers,

the American economy, of these enormous losses in canceled and reduced sales. Let's not lose sight of that.

I would just like to conclude by stating that it seems in the past year we have debated the issue long enough. I would hope we can restrain ourselves from further debate and start voting and taking action and resolving this matter promptly.

Mr. MOORE. I think we are all 100 percent in agreement with regard to the six foreign buyers. The issue is how to go about it. We are all concerned about trying to recoup our foreign markets.

The CHAIRMAN. Mr. Kelly?

Mr. KELLY. I would like to be on record as having said something in favor of the proposition that this country is not short of laws and systems but it is woefully lacking in prosecution.

There are plenty of laws right now to put a whole bunch of people in jail. Passing more laws will not solve that problem.

Federalizing this system could very well result in the same kind of sequence which developed recently with regard to the food stamp program. The food stamp program is a Federal program. It is operated by the Department of Agriculture. I understand they are something like \$6 million short in their accounts.

Therefore, Federal programs and Federal employees are not automatic solutions to anything. As a matter of fact, both of them are a major domestic problem.

It would seem, therefore, that where we have a problem that is relatively localized, there should be encouragement for effective prosecution and there should be heat for the use of the laws we already have, rather than just starting another program.

I think that we can almost determine how effective the new suggestion will be if you ask this question: Will we have to hire more people and spend more money?

If this is so, you can just write it off as being more of the same misdirection that is constituting a threat to the country now. We should cause people to do what they should do with what they have and not just simply bring in something new because the old does not function properly.

Mr. NOLAN. I will restrain myself and not engage in a philosophical debate with my friend from Florida and again say that we have debated this thing at such length——

Mr. KELLY. Do I have the time? I have not yielded.

Mr. NOLAN. I am sorry. I thought I was yielding.

Mr. KELLY. Since he does not want to engage in a philosophical argument, Mr. Chairman, I yield back my time.

Mr. THONE. I had a brief exchange with Mr. Fithian earlier on this matter of grain weighing.

I still think from all the study that I have done, and it is not all that great, but checking with the people concerned I think we have problems in this weighing area, serious problems. Somehow this should be coordinated.

Addressing myself specifically to the Krebs amendment, though, he wants to delete "supervision of" which I first thought would be desirable if we got into this area.

Then I was astounded when Mr. Bergland asked the Department representative and he said that you could use 850 employees to supervise and 850 to do the whole ball of wax.

I listened attentively and watched that operation in several elevators down in New Orleans. I do not quite understand that response, but I do not think it is too important with regard to the argument I would like to make.

I would oppose even the Fithian amendment after giving this thing some more study here and more specifically the Krebs amendment.

You talk about 850 additional people. I think there is some logic to the argument expounded by the gentleman from Texas, Mr. Poage, and echoed by Mr. Sebelius. We talked about it a little yesterday.

Again, Mr. Nolan and Mr. Harkin, I do not want to get into a philosophical discussion, but the best joke going out around home is that the three greatest white lies we have in America are:

No. 1, "I gave at the office;"

No. 2, "My check is in the mail;"

No. 3, "I am from the Federal Government, and I am here to help you."

Just federalizing this thing will not purify it. I think we all concede this.

Again Mr. Bergland hit on an excellent suggestion. He did not amplify it because he did not have the time, but in section 17 we are making any violation of weighing a criminal penalty subject to 251, title 18 of the code. I checked the penalty, 2 years in prison and a \$10,000 fine.

I, for one, think there is dishonesty, deception, and theft and fraud in the particular area of weighing as there is in inspection, grading, and handling.

However, we also have an option later on, shown on page 12, to have the USDA make a thorough study of this. I know that might be considered by some to be a copout, and maybe it is. However, I don't think so.

I would also amplify on what the chairman suggested earlier. Under the U.S. Warehouse Act, and 60 percent of our export space now, as I understand it from the Department representative, is under that act, that act does have teeth. I would suggest to him, if I read the GAO report right.

As I carefully read the GAO report, your amendment goes further than they recommend in this weighing area.

However, under that 60 percent of the grain moving out of those port facilities can be effectively controlled by the U.S. Warehouse Act. As I read it right here in the GAO report, they license people to weigh inbound and outbound grain, and maybe you are right, Judge Kelly, maybe they are making it tougher on enforcement if that is the problem. It seems they have the basic authority to get that job done.

However, I also think, as Mr. Sebelius pointed out, and I think you referred to it, Mr. Fithian, you are running into some constitutional problems as I read the testimony, going back again on November 4 before this committee prepared by the warehouse division. Many

States required class 1 weighing. Alabama, Virginia, Washington they all show other categories. You run into that keg of worms.

I don't know the answer. Perhaps you need stronger enforcement.

I think it was Chuck Fraiser when he testified who pointed out that maybe the grain division of the AMS needs to be souped up.

I could not be prevailed upon to vote for 850 additional Federal employees to supervise hoping that that will reestablish this integrity which I think we all concede, Mr. Fithian, is obviously necessary in this grain trade.

Are you rapping me down, Mr. Chairman?

The CHAIRMAN. I think your time has expired.

Mr. THONE. I am only half through.

The CHAIRMAN. I am sorry. The time of the gentleman has expired.

The Chair would like to have a vote at least on the Krebs amendment.

Does counsel have a comment before I put the question?

Mr. BOR. Mr. Lauth has indicated he would like to clarify a remark he made earlier to the committee.

Mr. LAUTH. When I gave the figure of \$16 million which related to the 850 people who would be involved, I responded from the standpoint that that would be the total cost of that program, not an increase over whatever we have today. That is the cost of that program: 850 people would be between \$16 and \$17 million. I did not mean to imply that that was an increase in any existing program.

The CHAIRMAN. Do you know what the existing program costs are?

Mr. LAUTH. The only figure I can give is based, first of all, on the elevator employees who do the weighing today except in your State and a few other States. The system that is in effect is a supervising agency, whether private or State, supervising the weighing operation.

The cost of that supervision today, based on what those State or private agencies charge the elevator for that service, is roughly \$6 million.

Mr. HARKIN. Question, Mr. Chairman?

The CHAIRMAN. Please ask it quickly, Mr. Harkin.

Mr. HARKIN. \$16 million. That is for supervision alone?

Mr. LAUTH. For supervision by the private or State agency of the weighing.

Mr. HARKIN. If you say it will cost \$16 million, then talking about the Krebs amendment—is that what you are talking about now?

Mr. LAUTH. Yes.

Mr. HARKIN. Is that not exactly what they pay their own people now to weigh the grain? Can't that be recouped from the grain elevators as cost to them?

Mr. LAUTH. The proposal is to take the existing employees. The cost of that is \$16 million less whatever they might save.

Mr. HARKIN. If I am an elevator owner and I hired you to do the weighing, I have to pay you a salary.

Mr. LAUTH. That is right.

Mr. HARKIN. If the Federal Government said the weigher will be a Federal employee but they will assess against me, the elevator owner, his salary, it will still cost me the same amount of money except I have no further control over you.

Mr. LAUTH. That is right.

Mr. GRASSLEY. I want to know what this will cost in the way of equipment. If the Federal Government will take this over, will the Federal Government have to buy all the equipment. How much will that cost?

Mr. LAUTH. My response to the question was based on the supervision and weighing and not testing of scales or the equipment needed.

Mr. GRASSLEY. What will that cost us?

Mr. LAUTH. We have not tried to estimate that. I would think the States now have adequate equipment. If you could employ a private manufacturer who has equipment to test the scale, that could be done under Federal supervision or a Federal setting of standards.

Mr. GRASSLEY. The Federal Government will be doing the weighing and they will not have to own the scales?

Mr. LAUTH. We have not thought that would be done.

Mr. GRASSLEY. Then they will pay rent for them, won't they, if they are going to be the agency doing the weighing?

Mr. LAUTH. I did not estimate any cost with respect to operation of those scales or ownership of the scales.

The CHAIRMAN. The Chair will interrupt to suggest that perhaps the Department is not the best witness in this regard. It might be better to question Mr. Krebs concerning his intentions.

Mr. GRASSLEY. Is it his intention that the Federal Government own the scales and, if so, what will it cost?

Mr. KREBS. Mr. Chairman, let me say that I am in no position to estimate the cost of the equipment if, indeed, the purchase of equipment is necessary.

It would seem to me, however, that the gentleman from Iowa either is in favor of Federal activity in this particular field and is in a position to tell his constituents that he is in favor of it, or he is in a position to tell his constituents he is not in favor of Federal activity.

However, we cannot have it both ways. As this amendment now reads, without the elimination of these two words, I think we will end up with a system that is basically the same as what we have today.

Since philosophy is involved here, let me point out what has been said previously—if we are going to lose the markets involved in this, your district will be substantially more involved than my district, Mr. Grassley.

Just as we have lost the automobile market to Europe in the last 20 years, the cost will, in the final analysis, be substantially higher.

I think it is unfortunate that we have to take a vote here today without getting some figures from the Department of Agriculture on which we can really depend. There has been too much guesswork here.

Obviously, I do not have the expertise to come here and say it will take so many dollars for Federal inspection, but it seems to me we should be able to get some reasonable estimate from the Department by the time we convene again.

The CHAIRMAN. The Chair does not want members to vote if they feel they have inadequate information.

I, therefore suggest that the committee now adjourn and that the Department supply the figures tomorrow morning at 10 o'clock when the first order of business will be the Krebs amendment.

Without objection the committee stands adjourned.

[Whereupon, at 12 noon, the meeting adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

THURSDAY, FEBRUARY 26, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Richmond, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, Jenrette, D'Amours, Wampler, Sebelius, Thone, Symms, Johnson, Madigan, Peyser, Heckler, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, an associate counsel; Gene Moos, staff analyst; John M. Lindley, Glenda Temple, and Susan Bell, staff assistants; L. T. Easley, press assistant; James A. Culver, staff consultant, Subcommittee on Dairy and Poultry; Weldon Barton and Leon Geyer, staff consultants, Subcommittee on Domestic Marketing and Consumer Affairs; Alan Gray, staff consultant, Subcommittee on Livestock and Grains; Roxie Burris, staff consultant, Subcommittee on Oilseeds and Rice; Jerry Jorgensen, staff consultant, Subcommittee on Department Operations, Investigations, and Oversight.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee meets for further consideration of amendments to the Grain Standards Act.

We are pleased to have with us the distinguished Under Secretary of Agriculture, John Knebel.

Mr. Under Secretary, perhaps you could come forward to present what information the Department has prepared with respect to the personnel levels and costs in general that might be involved under the Fithian amendment.

Mr. KNEBEL. Mr. Chairman, we appreciate the opportunity to be able to provide the committee with cost figures with respect to the Fithian amendment as proposed to be amended by Mr. Krebs' proposed change.

As I understand it from our respective staff which got together following the committee's hearing yesterday, the first question was whether or not and how many Federal employees there would be if you were going to have the Federal employees there doing the weighing.

What are we talking about in terms of manpower?

Our estimation reflects that it would require 320 man-years at a cost of approximately \$5.28 million. That is, to have the man on the scale; that is, a Federal employee doing the weighing.

Now, if you had the man on the scale, then we also have a supervisory or monitoring role; and in order to achieve that degree for class 1, which means 100 percent of oversight, we are talking about an additional 680 man-years and an additional \$11.22 million of cost.

You add those two together to get the Federal weigher doing the job in a class 1 supervision and you come up with about \$17.5 million and 1,000 man-years of effort.

If, on the other hand you are going to have a class 2 supervisory role—and that is essentially what is in effect right now which means that we would physically oversee only about 25 percent of the actual weighing operation—then we would need 272 man-years.

That cost would run approximately \$4.5 million.

So if you took the Federal man on the scale plus a class 2 supervisory role, then you would be talking approximately 600 man-years and \$10 million of cost.

Mr. BERGLAND. Will the Secretary yield?

Mr. KNEBEL. Yes.

Mr. BERGLAND. Does the cost you have just given us presume the adoption of the Krebs amendment which provides for direct Federal weighing at export location.

Mr. KNEBEL. That's correct.

Mr. BERGLAND. The question of whether the supervision would be at a level 1 or level 2 has not yet been addressed by the committee.

Do you have any opinions on that?

I know from experience in my State of Minnesota that the supervision is the Association of American Railroad class 2 designation. It works extremely well. The supervisors move in to check weights at any time of the day or night or any day of the week. The weigher never knows when he will be inspected.

It has proved to be a very effective system. I'm not a believer in class 1 supervision. I think it's a waste of money.

Mr. KNEBEL. It certainly is a tremendous demand from the manpower standpoint.

However, it is very hard for us to give you a position on a class 1 versus a class 2 and oversight versus the direct weigher until we really see the shape of the legislation which is coming forth.

I think that what we are talking about here is the question as to whether or not there is going to be a Federal-State private involvement. Federal-State involvement, or just a Federal involvement.

Obviously, they are different positions depending on how you come out with respect to the legislation.

Mr. BERGLAND. Thank you, sir.

The CHAIRMAN. Mr. Krebs?

Mr. KREBS. I am sorry, but I am not clear on the figures that you were kind enough to give us here.

The 320 man-years that you mentioned at a cost of \$5.3 million—these are the people who would be doing the weighing; is that correct?

Mr. KNEBEL. Yes.

Mr. KREBS. Then you have a second category of 680 man-years at a cost of \$11.22 million which will be supervisory. Is that correct?

Mr. KNEBEL. In class 1 you have 100 percent overseeing, and in class 2 you have approximately 25 percent incidence of oversight.

Mr. KREBS. Why would you need in this grouping, where the Federal employees are doing the actual weighing, 680 man-years while in the present system you only need 270 supervisory personnel?

Mr. LAUTH. Mr. Krebs, will you restate that?

Mr. KREBS. Mr. Chairman, I am not sure that the committee is in order. I am having trouble hearing.

What I am trying to find out is this: Why do you need 680 man-years to supervise the 320 when the Federal individuals do the weighing, while presently, when the others are doing the weighing, you only need 270-man years?

Mr. LAUTH. Let me begin by possibly describing the work that would be done by the 680 Federal supervisors over a system where you have the actual weighing done by the Federal employee.

First, you will recall yesterday that we estimated for you that if you simply had Federal supervision over the weighing without a Federal employee at the scale, it would be roughly 850 people to supervise that kind of a Federal system.

If you use a Federal employee at the scale, then you obviously don't need a man looking over his shoulder; so you will reduce the 850 roughly by that amount and come up with the amount of people that are needed to supervise the rest of the weighing process.

We are talking about weight supervision here. We are talking about not just looking at the man who is recording the weight on a scale ticket.

We are also talking about the other parts of the grain elevator where something can happen that would result in a misweighing.

For example, you ought to be sure that the mail cars are empty and the trucks are empty and that the barges are empty; and you ought to be sure that the grain was then delivered from those points to the scale on a conveyor belt down through the pit and so forth.

You have to be sure that nothing is happening there that would result in a misweighing.

You also have to be sure that once it leaves the scale and gets on a vessel, that the grain is going from that point to the vessel.

Now, that system—that is, to be at those points and to make those observations—under class 1 you would be monitoring or supervising those points 100 percent of the time.

If you are going to provide what you might call representative supervision of a representative number of trucks or barges or rail cars, let's say at 25 percent, then that would be class 2.

That system is in effect today and it is being done by State agencies or private agencies at the export elevators.

About 25 percent of the elevators at ports have class 1. The balance has class 2 or class 3.

I hope I haven't gone into too much detail here, but that I think is the answer to the question that you're asking, I believe.

The CHAIRMAN. How do you define class 3?

Mr. LAUTH. Class 3 is something less than class 2—something like 25 percent.

Class 2 requires 25 percent of the grain, and it has to be on a regular shift. Class 3 is just some random supervision.

The CHAIRMAN. At the present time, with respect to terminals and warehouses licensed under the Federal Warehouse Act, how is weighing supervised?

Mr. KNEBEL. Approximately 27 percent are in class 1. I would recall your attention to the fact that the affirmative action plan of the Bunge Corp. does require class 1.

We have asked the major companies in this affirmative action voluntary compliance program—we have proposed a class 1 upgrading of weighing at export points.

Indeed, all of these are export points.

The CHAIRMAN. When you say that the affirmative action program requires class 1 weighing, in the case of Bunge Co., for example, who provides that supervision?

Mr. KNEBEL. The implementation of this is such that it is just now getting onstream.

Mr. LAUTH. The way that it operates at the Bunge elevator is this. I believe Bunge has an elevator in the Northwest as well.

They are actually providing the supervisory service so the affirmative action program makes it so that we monitor to make sure that that program is being complied with, with respect to class 1 weight, to be sure that the weighing agency is providing that class 1 weight.

But the actual weighing and supervision is being provided by the existing weighing agencies—whether a private or a State one.

Mrs. HECKLER. Mr. Chairman, I would like to ask a question. I am interested in knowing what the aggregate cost of a Federal inspector would be. What would that be—have you estimated that?

Mr. KNEBEL. Yes, ma'am, we have.

As I stated before you came in, in order to put a Federal employee on the scale to do the physical weighing, this would require approximately 320 additional man-years at a cost of \$5.28 million.

In order to have the oversight and monitoring required to achieve the class 1—that is, 100-percent oversight—would take an additional 680 man-years.

Mr. Lauth articulated this for Mr. Krebs. The number of additional people is—once that grain comes in, you have to watch the unloading all the way through the system, and that costs an additional \$11.2 million.

So you have essentially 1,000 man-years of activity and about \$16.5 million. That is, to do this system.

Mrs. HECKLER. What this is doing is to put a Federal policeman at every stage in the process of monitoring.

Mr. KNEBEL. There's one other refinement.

You realize of course that these figures are just for export. This does nothing at the interior points.

Mr. BERGLAND. I would pursue that point, if I may.

The affirmative action program is a voluntary proposition. Obviously there is some cost entailed.

How much?

Mr. KNEBEL. Again, we are just now getting onstream with those ordered by the court.

Those that we have proposed which are going to be voluntary, we have no further involvement at this point.

We anticipate that the weighing and the supervisory work will be done by the inspection agencies.

Our work will be to insure compliance with what has been either ordered by the court or agreed to on a voluntary basis by the exporting companies.

We have, I suppose, some additional man-years that will come as a result of this but very frankly I don't have the number with me right now.

It remains to be seen.

We have four affirmative action court-imposed actions which are getting underway now. We have 16 more voluntary discussions underway now. We don't know what's going to run.

Mr. BERGLAND. Thank you.

The CHAIRMAN. Mr. Baldus?

Mr. BALDUS. I apparently have been led to believe that the Federal Government up to this point really was not doing anything in weighing and yet in the latter part of your discussion it seems to me that that is what we are doing presently.

Did I misunderstand when you were talking about the class 2 of \$4.5 million and 272 man-years?

It seems to me that you said that that is the present level.

We have some Federal involvement in inspection, but not a Federal involvement in weighing at this point. Is that correct?

Mr. KNEBEL. That is correct.

What we do at this point is to issue a certificate to the licensed weigher. We do not go out except in the court-ordered situation. Hopefully, when we get into some voluntary compliance, we will be going out to monitor this compliance.

But we will not actually be in the supervisory role or oversight roles directly on the spot. We would just be checking this.

Mr. BALDUS. How long have you been issuing a certificate to a weigher?

Mr. KNEBEL. However long the act has been in existence.

Mr. BALDUS. But you have had no follow-up of that? You have had no suspensions of certificates or testing?

Mr. KNEBEL. There have been sporadic suspensions.

There was a situation in New Orleans where people were indicted. We lifted their ticket.

We do not have the authority at this point to do any more than lift that ticket. That is our sanction and it is a pretty hefty one.

If you put a man out of business and take his livelihood away—

We do not go out on site one on one.

Mr. BALDUS. On a random check either? You do or do not random check? It has not been the policy to random check to see if proper rates were being done and that the licensed weigher was weighing correctly and that the scales were right?

Mr. KNEBEL. We make two unannounced inspections per year. We try to make two at each facility.

This is just to determine whether or not there are shortages or overages in the actual checking of the scale. I understand—and I raised it last night with the staff—that we're not really talking about a very

big involvement. They said that you may be in an elevator checking it 2 or 3 days on this biannual inspection and you may spend 15 minutes checking out the scale to see whether or not it's been tampered with—and that's it.

Mr. BALDUS. Is that certificate issued to the facility or is it issued to the person?

Mr. KNEBEL. To the individual.

Mr. BALDUS. To the individual?

Mr. KNEBEL. Yes.

Mr. BALDUS. Another question: In the computations, did you make any attempt to do this. Where you put a Federal man on the scale and you put a Federal man at the next step detective process to make sure that the barge is OK and all of that, how many people would be displaced in the process so that you have an estimation of what the increased cost, if there is some, to the consumer or producer?

Mr. KNEBEL. Mr. Baldus, at the present time if you take the universal weighing cost, there are approximately \$6 million per year where an inspection company bills the export company for the weighing services performed.

That cost will be passed along regardless of who is doing it. It is a Federal cost.

The export company is still going to be charged in this situation.

I will admit that we need to revise our weighing fees. The schedules are very disparate. We are all over the lot in this thing.

We do not know whether or not in some instances the weighing activity is supporting the rest of the grading activity or vice versa.

We plan to look at it.

Mr. BALDUS. They are really not your fees. They are set entirely by the people.

Mr. KNEBEL. We would have the right under the regulations——

Mr. BALDUS. If the new law went in, then you would have that. Is that correct?

Mr. KNEBEL. We want very much to avoid a ratemaking authority such as you have at the ICC. This would be an administrative nightmare to try to get into the economic decisions, but we have to have some broad criteria and guidelines and we are working on those now.

Mr. BALDUS. In the class 1 inspection, you have the difference of the fact that you are not just weighing, but you're following the process to make sure a fair weight, not only on the scale, but in the process. Is that a fair way to describe it?

Mr. KNEBEL. That's correct.

Mr. BALDUS. Is that currently being done by someone in most of the cases? You would have a displacement of someone there I presume.

Mr. KNEBEL. It's my understanding that approximately 27 percent of the grain now going in export is subject to class 1, or theoretically subject to class 1, and that a good bit of that is only the result of the court-imposed affirmative action plan——

Mr. BALDUS. As of right now, but 6 months ago it would not have been. Is that correct?

Mr. KNEBEL. You're talking about a large cost. I would say 6 months ago it was appreciably less.

We have an indication that several of your major export companies are seriously contemplating going to class 1 on the voluntary basis.

Mr. BALDUS. In spite of the cost?

Mr. KNEBEL. Yes.

Mr. BALDUS. It would be a cost whether they did it privately or through a chamber of commerce or through a trade association, or whatever it would be? They are saying that the extra assurance would be worth it. Is that correct?

Mr. KNEBEL. That is essentially what we understand, yes.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. Thank you, Mr. Chairman.

Three hundred twenty man-years that you say would be required on the scales are now required on the scales. Is that right? They're done by a private person. Is that right?

Mr. KNEBEL. Yes.

Mr. FITHIAN. What portion of the 680 man-days are now being performed?

I am sorry, man-years I mean to say.

Mr. KNEBEL. Class 1 weighing on export theoretically is 27 percent at this point.

We think it is something less than that if indeed all of your court-ordered affirmative actions were fully operative—then it would achieve that.

I would suppose that if you had 100 percent of the people saying—that is, doing—class 1 weighing and reporting that it is being done, then you could take the 27 percent of that 680 figure. But I have every reason to believe that it is appreciably less than that right now.

Mr. FITHIAN. The court in its order, without trying to presume how they arrived at it, must have thought as the GAO thought that something was rotten in Denmark and needed correcting.

That, I think, is how we got into this business.

We have tossed some figures around this morning. I guess basically what I would like your comment on is this. What is the real difference between what is being proposed in this amendment and the cost which would be ultimately borne by the producer and the cost of the system now?

Do you have any figures that would distinguish between the cost of the system which is underway, which is now mandated by the courts, because of the bad situation which has developed, and the cost of what we are proposing here? In other words, I am seeking a comparative cost.

Mr. KNEBEL. That is a tough figure to come up with.

Mr. FITHIAN. It is the only one that is meaningful, you would admit, wouldn't you?

Mr. KNEBEL. Yes.

Our best estimate at this time, as I stated earlier, is that there is approximately \$6 million a year changing hands between the weighing agency and the export company.

Our proposal, which I say is the one we're talking about here, would result in a total industry cost increase of \$16 million or a net increase of some \$10 million.

Mr. FITHIAN. That is with the Krebs amendment attached, is that correct?

Mr. KNEBEL. Yes.

Mr. FITHIAN. Have you computed what the amendment now before this committee would cost if the Krebs amendment were not attached?

Mr. KNEBEL. I think that you would probably still have the \$6 million exchanging hands in the private sector, plus the \$11.2 million for the class 1 Federal oversight.

Again, this would limit it to export only.

So you would have essentially about an \$18 million cost.

Mr. FITHIAN. I have some problems there because with the Krebs amendment, which mandates that the inspection will be done by a Federal employee of the USDA, you come up with a total of \$16.5 million. If we dropped that, we come up with a figure of \$18 million?

Mr. KNEBEL. I think you go back and look at the cost of having the Federal Government on the scale which we computed at about \$5.28 million and you look at the cost and the money changing hands now totally in the private sector between the inspection agency and export company and you get \$6 million. Essentially you come out with a wash.

There's a million dollars difference on either side.

Mr. FITHIAN. Mr. Under Secretary, I have not run the computations on your figures, but I think the general consensus of those of us who have discussed this is clear: With Mr. Krebs' amendment and the additional mandating of Federal inspectors on the scale, the observation here yesterday, both by the Department and members of this committee, was that that would cost too much money.

I am astounded that we come up with a system that we drop the Krebs amendment and save money somehow.

Let me close my comments with this. Perhaps you are not aware that the average loss for the last 5 years, because of the bungling system that we have, was reported in the New York Times on February 19, 1976, of \$120 million defrauding of our foreign customers per year.

This makes either the \$6, \$10, \$11, or \$18 million figure which you have mentioned in this kind of shell-game economics this morning to be rather small.

Mr. KNEBEL. Mr. Fithian, I very much regret that you used the term "shell-game economics." We are making a good faith effort to give you our analysis.

Mr. FITHIAN. I am sorry, but the whole discussion yesterday, including your personnel, indicated that the Krebs amendment would increase the cost. The figures just computed indicate that if you drop the Krebs amendment and use my amendment, then the cost would be increased.

I am left out in left field as to how that could possibly be.

The CHAIRMAN. I think we may be confusing the total cost with the cost of Federal employees.

Under the Krebs amendment, Mr. Knebel, you estimate the cost to be \$5 million a year for the Federal weigher on the scale.

If, in addition to that, there is class 1 supervision, that estimate becomes \$11 million. Is that correct?

Mr. KNEBEL. It is increased by \$11 million.

The CHAIRMAN. The increased Federal cost of the Krebs amendment would be in the nature of \$16 million.

Mr. KNEBEL. Yes.

The CHAIRMAN. If the Krebs amendment were not adopted and the Fithian amendment, as I understand it, were limited to Federal class

1 supervision, the additional Federal cost would be around \$11 million. Is that correct?

Mr. KNEBEL. Yes.

The CHAIRMAN. So, from the Federal standpoint alone, the cost of the Krebs amendment would be \$16 million as opposed to \$11 million for the Fithian amendment.

This, however, does not take into account the fact that the grain firms are presently paying about \$6 million to weighing agencies.

Mr. KNEBEL. Essentially correct.

The CHAIRMAN. Mr. Fithian, does that comport with what you understood?

Mr. FITHIAN. I thought the Under Secretary——

The CHAIRMAN. He was adding the cost of supervision under your amendment without Krebs and the cost of the private weighing.

Mr. FITHIAN. I understand that.

I think that it is clear that the only meaningful figure, Mr. Chairman, is the difference between what it is costing us now to inspect grain and what it would cost after we pass this legislation.

Any other figure then that is of very little importance to this committee because the producer is going to pay for the inspection whether you hire the board of trade, whether Bunge hires a man and puts him on the job, or whether you put a Federal inspector on the job.

The CHAIRMAN. The difference will depend a great deal on how you finance the Federal system.

If you finance it entirely from user fees, then the only difference between the private inspection program and the Federal inspection program would be the vagaries of who has paid what under what pay scale and how many people are involved.

However, if you pay the Federal cost partially out of appropriations and partially out of fees, it will still make some difference to the Office of Management and Budget how much it would cost for additional Federal employees over and above the Treasury receipts collected from fees.

Mr. BERGLAND. Mr. Chairman, would you yield on that point?

The CHAIRMAN. Yes.

Mr. BERGLAND. The conversation you had with the Under Secretary as to cost presumed, as I read it, level 1 supervision at export locations only?

Mr. KNEBEL. Yes.

Mr. BERGLAND. And something less than that on the interior points?

The CHAIRMAN. Their costs do not include any changes in the present arrangements for interior points.

Mr. KNEBEL. That is correct. Just at exterior points.

Mr. BERGLAND. On the method of financing—I have always assumed that the financing would be from a system of user fees.

Am I mistaken in my assumption?

Mr. KNEBEL. We don't feel that the user fees should go to 100 percent of employee costs. There are certain benefits that are paid as a general principal. When you get into a user fee concept which are traditionally picked up.

Those go to the fringe benefits and the Government contribution on health insurance and these types of items. And some of the overhead as well.

Mr. BERGLAND. The user fee would be scheduled to cover the actual salary of the man doing the work physically on location?

Mr. KNEBEL. Essentially that is correct.

Mr. BERGLAND. Not the retirement of fringe benefits nor the supervisory support in Washington?

Mr. KNEBEL. That is correct.

The CHAIRMAN. I think this is an important point because it is up to the committee, if it decides to legislate in this area, to determine how much of the cost of the inspection service will be attributed to fees.

I don't think we have made any firm decision on that, Mr. Bergland, but it was assumed in the committee print that the cost from the regional on down to the working level would be paid through the collection of fees.

Mr. BOR. Mr. Chairman, the amendment of Mr. Fithian which is presently before the committee on page 4 provides that user fees will be charged which will cover the estimated cost to the USDA incident to the performance of the weighing functions under this section.

So, if the committee wishes to abide by a different rule, then this section would have to be amended.

The CHAIRMAN. Thank you.

Mr. Hightower?

Mr. HIGHTOWER. Mr. Under Secretary, I was interested in your statement that the Secretary had only the alternative of keeping up the license of a weigher if something was found to be wrong in the way he handled his job.

Would the Department look with favor on an amendment to this bill that would provide for a temporary or permanent suspension of these licenses by the Secretary for cost?

Mr. KNEBEL. You get into your Administrative Procedures Act, Mr. Hightower.

We are very anxious on the one hand to make sure that when we move administratively that the person has the right of hearing and that he is entitled and given due process before our action becomes final.

On the other hand, we need to have the authority to move in behind the individual in order to make sure that the flow of grain through the ports is uninterrupted.

But from the standpoint of a summary and the lifting of a ticket without charges, we would not want that.

Mr. HIGHTOWER. I understood the testimony to be that that is the way that it is now.

I understood that you had on occasion lifted some licenses, but that was all you could do.

Mr. KNEBEL. Please understand that we only lift those tickets after an administrative procedure hearing.

Due process is provided.

Mr. HIGHTOWER. Well, back to my point.

You said that this was all you could do. I am sure that you did it properly, but would the Department lack the authority to do something of lesser significance like a temporary or permanent suspension for malfeasance or misfeasance on the part of these weighers?

Mr. KNEBEL. Of course, in the whole gambut of remedies, you can have a recommendation by the Department for something less than lifting their ticket. We do have that authority now.

Mr. HIGHTOWER. You do have the authority, then, but it hasn't been exercised?

Mr. KNEBEL. I am not sure it has not been exercised, but in the situation which has developed in New Orleans, we have taken the extreme authority and moved with finality.

As a matter of fact, most of those people have surrendered their tickets voluntarily rather than face this situation.

Mr. HIGHTOWER. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bedell?

Mr. BEDELL. Mr. Under Secretary, let me ask you this.

When we were in New Orleans, we had the impression that there were probably going to be more and more consent decrees—or whatever you call them—where the elevators would be having class 1 supervision of their weighing. They felt that what had been done so far worked well and we could expect an expansion upon that program.

Was that correct?

Mr. KNEBEL. That is correct.

As I said earlier, some of the major exporting companies, who were discussing these voluntary plans with us, are showing a very favorable tendency to move toward this system.

Mr. BEDELL. So you would anticipate that if nothing is done, then you have 27 percent under that now and you would expect this to increase where more and more of them would have this type of class 1 supervision initiated by themselves. Is that correct?

Mr. KNEBEL. That is correct.

Mr. BEDELL. If that is true then if you look at the cost here, we first of all, as I understand the cost, have roughly \$5.8 million of cost for the weighers themselves. Is that correct?

That is what we have said before.

Mr. KNEBEL. I believe that is correct.

Mr. BEDELL. We have \$11.8 million for the supervision under a class 1 system of the Department if it were to instigate it. Is that correct?

Mr. KNEBEL. \$11.2, sir.

Mr. BEDELL. All right.

Right now, if everything that was in effect were in place, then 27 percent of that would be done at this time. So 27 percent of that \$11.2 million, or approximately \$3 million of cost, would be involved right now in that supervision. Is that correct?

Mr. KNEBEL. I do not know that you can draw that conclusion.

This, I think, was part of Mr. Fithian's problem that led him to conclude that we were playing shell game economics.

You have to remember right now that the schedule of fees and fees are quite disparate, as I said earlier.

If we had uniform fees across the country, then I think you could reach that conclusion.

Mr. BEDELL. But if we are talking about costs, they are there. Once that is implemented, there will be 27 percent of what we have been talking about under class 1 inspection of the \$11.2 million. Isn't that fair assumption?

Mr. KNEBEL. We do not know if the fees are accurately reflected in the costs and vice versa.

Mr. BEDELL. Sure.

But if that is going to increase, which we have agreed should be done and it is going to increase, then surely we have to subtract the present cost figure of \$3 million from the \$11 million, which is to say that right now we would have an increased cost of \$8 million which will be constantly reducing itself because of the fact that it is already in the plans that the 27 percent will be increased and the \$3 million will be increased. Actually what we are talking about is less than \$8 million in additional cost to implement something across the whole system which is now implemented in approximately 27 percent and which the Department acknowledges should be implemented in more than the 27 percent.

Is there anything wrong with that statement?

Mr. KNEBEL. As I say, Mr. Bedell, I don't believe that you can straightline these figures.

Mr. BEDELL. We're having to take what figures we have.

Mr. KNEBEL. I understand that. That would be the major problem that I would have.

The relation of fees to cost is a great problem.

To the extent that your assumptions are correct, then your conclusion would be correct.

But, as I say, I must caution you somewhat on the assumptions.

Mr. BEDELL. But we do agree that we need more first-class inspection of weighing. We do agree that it is roughly now in the order of 27 percent. We do agree that the more of that—Mr. Fithian's amendment would really mandate that we had it across the board.

We do agree that the more we have it, the less doing it across the board would cost as compared to what was in place.

Mr. KNEBEL. I have no problem with that.

I cannot tell you that the 27 percent has actually been done by court order, because it is my understanding that some of it was done even before these court orders came into effect.

The CHAIRMAN. Mr. Harkin?

Mr. HARKIN. Mr. Under Secretary, I have problems with these figures.

It seems to me that there is some kind of contradiction. I do not know exactly how to phrase it, but I hope you understand what I mean.

If you are talking about the Fithian amendment with inspectors and supervisors, then you talk about the Krebs amendment where you don't need any supervisors.

You could do away with the whole supervisory thing.

Mr. KNEBEL. No; you really cannot. You cannot do away with the supervisor at all because you have to have, in order to do the class 1, by the time the grain hits the yard it has to be watched at several points. As Mr. Lauth tried to explain to Mr. Krebs, in order to achieve class 1 you have to have more people.

The man on the scale cannot be out looking at the grain car or the hopper car or the truck car.

You have to have people at those points.

So you cannot say that you don't need supervisory because you have a man on the scale.

Mr. HARKIN. You are saying that even if you went with the Krebs amendment, you would have to have supervisory personnel?

Mr. KNEBEL. Yes, sir, because that man on the scale can only be in one place at one time. As we said, you have to have 320 men on the scale but you have to have 680 men along the chain from the time it hits the yard until it gets to the scale.

Mr. HARKIN. Those are just inspectors are they not?

Mr. KNEBEL. Yes.

Mr. HARKIN. They are not supervisory but they are inspectors?

Mr. KNEBEL. This again is a part of our problem. It's a matter of semantics. The term is "supervision."

You could use overseeing or monitoring or any number of different terms.

I think that is part of your problem.

Mr. HARKIN. I'm sorry I didn't have a chance to read your recommended changes. I thank you for sending up those things yesterday. Maybe some of my questions will be answered when I read that material.

I don't want to pursue this too far, but again it seems to me that we had a system of inspection where you had Federal inspectors. You charged user fees. In other words, you charged the elevators for the use of those inspectors so that you would not increase the Federal outlays.

All you are doing there is hiring more Federal employees.

If you get rid of the supervisors as I think of them now at the top level looking over the shoulders of the private inspectors, if you do away with them, and I don't think they are needed, then you would have a fully implemented Federal inspection system as recommended by the GAO. If you did away with the supervisory personnel, then I do not think the cost is going to go up that much.

I don't know if you have taken that into account.

Mr. KNEBEL. Yes, sir, we have.

I would suggest to you that back in November the Transportation Division prepared what I think is a rather graphic schematic and presented it to this committee.

I believe it will show you the points at which you must be checking in order to have a class 1.

We will be glad to leave also for your use and the staff's use the number of people involved at each one of these export elevators in order to achieve class 1.

You can go through this list which we have.

Mr. HARKIN. We are not talking about the same thing.

Mr. KNEBEL. That is quite clear.

Mr. HARKIN. What I am talking about is this. If all the inspectors under the Krebs amendment—they are Federal people and you don't need the supervisors—that is, the Federal supervisors.

Mr. KNEBEL. It's a matter of semantics. The supervisor is not the person looking over the shoulder of the man on the scale.

The way we use the term, he is the man who is supervising the grain as it passes through his points before it gets to the scale.

There is no one standing over the shoulder of the Federal weigher as he is sitting on the scale. These people are not duplicitous, if you will.

You have to have those numbers in order to achieve the class 1 operation.

Mr. HARKIN. On page 41 of the GAO report it said that in October of 1975 after weaknesses in the inspection system had been publicized, the Congress included \$5 million of USDA's fiscal year 1976 appropriations to a marketing service to employ about 200 additional supervisory personnel.

So we have already spent \$5 million for supervisory personnel.

Mr. KNEBEL. I wish that I could tell you that we've been able to spend it. We have had a devil of a time recruiting.

Next month the first class will start up in Houston, Tex. This is on the grading side. This is not on the weighing side.

We have made the first move here.

Mr. HARKIN. You said that you needed 200. It says here: "By January of 1975, 200 will be hired." Are you going to reach that?

Mr. KNEBEL. No; unfortunately we are not. We haven't been able to recruit that quickly.

We have several problems here. The in-place estate systems are very upset over the proselytizing efforts to obtain quality people. We have background checks in view of the industry situation which have taken a lot longer than we had anticipated because, very frankly, some of these people who are working in the trade in these areas are under investigation.

We want to be very careful that we do not hire somebody and put him on the Federal payroll and find out that he is about to be indicted.

Some of these things have taken a little longer. If you will bear with us, then I think this is one way to demonstrate some of the transitorial problems that we'll have if we go to the all-Federal system.

It will be a nightmare.

Mr. HARKIN. I'm sorry my time is up.

The CHAIRMAN. The Chair would like to consult in a collegiate way with the committee.

This discussion on this amendment indicates that much in this bill depends upon the decision of the committee as to whether we have an all-Federal system at the export points or a modification of that approach which would permit contracting with States.

Although we have been over that previously a number of the members of this committee have spoken to me about their concern with the all-Federal system.

In order that the committee's judgment can be as broad and representative as possible, I think that we ought to make a final determination with respect to export inspection authority with all members on notice that at a specified time that decision will be made.

If for any reason they cannot be present themselves, they can leave a properly instructed proxy.

The committee will remember that we voted once to provide authority for the Secretary to enter into contracts with States to provide inspection services. That vote was reversed subsequently a day or two later by another vote excluding State agencies. Both of these were tentative.

When the last vote was taken, about 75 percent of our membership was present. Because of the importance of this issue, I feel all members should participate in the final decision.

What the committee ultimately decides, of course, impacts to a large extent on our judgment with respect to other matters such as weighing and conflicts of interest.

I have a feeling which I am sure other members share that we have been drifting about over the last couple of days. We are not making clear and decisive judgments. Yet must proceed rather soon to report this bill.

What I am about to suggest is this.

We are scheduled to meet on Tuesday, Wednesday, and Thursday of next week for further consideration of this bill in the hope that we can complete all final decisions with respect to the committee print.

Following the Thursday session, we would be in a position to introduce, a clean bill reflecting the decisions made in the committee print in order to bring that bill back the following week and have it reported out from the committee.

Unless we make a final determination on the question of export authority first, we will be making judgments on other amendments in the dark.

So that no one will be caught off guard and those who are unable to attend can leave a proxy, I should like to repeat that next Tuesday we will consider an amendment, to be distributed to the members on Monday, which will resolve the question of whether we shall have an all-Federal system or grant limited authority to the Secretary to conduct a Federal inspection through the States as well as through employees of the Department.

Following that decision, we will proceed to make judgments on weighing, conflicts-of-interest matters, and other remaining issues relative to grain inspection.

I would assume that this would be the final judgment of the committee with respect to the authority question.

Mr. BEDELL. Is that at export points only?

The CHAIRMAN. Yes.

Mr. BERGLAND. Mr. Chairman, I think the procedure sounds reasonable. Obviously we are all capable of talking this thing into perpetuity.

It sounds to me like a good idea.

Are you putting us on notice that we ought to have our amendments prepared and distributed in advance of the final consideration?

The CHAIRMAN. The Chair will offer such an amendment on Tuesday if no one else does. It will be circulated in draft form on Monday.

Mr. BERGLAND. Would it be possible for all members who have amendments and intend to offer them to have them prepared and distributed so we will know in advance what we're looking at?

I have an amendment to Mrs. Heckler's amendment.

The CHAIRMAN. I do not want to make it an absolute rule, but that would be very helpful. If there are other amendments that members intend to offer during the markups on Tuesday, Wednesday, and Thursday, it would be helpful if they could have them prepared and available in advance of those meetings.

Obviously this might not be possible in the case of an amendment to the amendment.

Mr. HARKIN. Mr. Chairman, I do not like to be difficult, but let me say this. Are you saying that there's going to be another amendment offered by the chairman to undo what we have already voted on almost three times in the committee now?

The CHAIRMAN. We voted twice on this, once each way.

We voted first in favor of a proposal allowing the Secretary to conduct Federal inspection through States or through Department personnel.

Then we reversed that decision.

Mr. HARKIN. I understand that.

The CHAIRMAN. As I mentioned at the time we began our preliminary consideration and markup, the decisions were to be viewed as tentative and would serve only as a guide to the staff in its legislative drafting; stated many times, as I recall, that when the final bill is brought forth, members will also have an opportunity to amend it.

My primary reason for adopting this approach is so that the final vote on this key issue will truly reflect the will of the committee as far as possible.

Otherwise, when we bring back the claim committee bill, we might have a different configuration of members present who might reopen the issue then.

Mr. HARKIN. Will the committee members be given 5 minutes to speak?

The CHAIRMAN. Surely. There is no time limit.

Mr. THONE. I agree with that, Mr. Chairman.

Having made the motion to reconsider after my good friend, Henson Moore, made his confession on things down in Baton Rouge, let me say this.

Seriously. I think we are now drifting. I think you are right. Central to the whole issue is the matter you just presented.

I don't see how we can now make an intelligent decision on the Fithian amendment as amended by Mr. Krebs. I don't see how we can at this time make a sound decision on this important issue. As you remember, Mr. Chairman, we talked about another matter at the very first meeting as I recall; the important conflict-of-interest section here.

Until we settle this basic issue we can't do anything else. I think everybody is now on notice that we will fish or cut bait next Tuesday.

That is fine and dandy.

I have tried to be conscientious on this subject. I have not missed a minute here, and it gets a little frustrating to go on and on with this golden oratory.

Do not misunderstand me. It is part of the process, and I accept that.

But as long as you schedule it now, as you just stated it, then I think it's very fair to all concerned.

Mr. JONES of Tennessee. I concur heartily with your proposal, Mr. Chairman. I think we have spent enough time on this issue. This committee has a lot of work to do in 1976. I think we ought to get on with it.

The CHAIRMAN. Thank you.

Mr. Fithian?

Mr. FITHIAN. Mr. Chairman, I concur that we have discussed this enough to make the basic decisions.

I would presume that the amendment to be circulated, then, would reflect the tentative decision which was made by this committee on a 19 to 10 vote. This vote was that we would have Federal inspection at export terminals rather than some other amendment which we would have to process subsequent amendments to in order to get back to the position the committee is now in.

Am I correct in that?

The CHAIRMAN. I do not intend to offer an amendment requiring mandatory original inspection by the Federal Government exclusively.

Instead it will establish original Federal inspection at export ports with a proviso that the Secretary may contract with appropriate State agencies to conduct that Federal inspection under specific guidelines and standards.

If the majority does not favor this approach, the vote will be no. Under the circumstances we will find ourselves precisely where we are now.

The committee will have made its decision.

Mr. FITHIAN. That is a new proposition in the committee, Mr. Chairman, is that correct?

The CHAIRMAN. Semantically it is a little different than what is called for in the committee print.

Mr. FITHIAN. Substantively have we not, in our tentative decisions here, by vote in the committee already concluded that there would be Federal inspections at the export terminals, and it would not be by cooperative agreement with any other body?

The CHAIRMAN. That's correct.

Mr. FITHIAN. I am concerned that we now inject a new proposal which has not been debated in the committee.

I would think that perhaps that kind of a new ground would come as an amendment to the basic amendment which this committee has already hampered out which was a Federal inspector at the port terminal facility.

The CHAIRMAN. The gentleman is correct.

It really is not a new proposal.

I think that I am correct in saying that there is no substantial opinion on the committee in support of the belief that the Secretary should be authorized to continue to allow private inspection agencies to function at export points.

I am afraid we are still closely divided on the question of whether only Federal employees of the USDA should conduct inspection, or whether the Secretary should be allowed to contract for Federal inspection services through appropriate State agencies.

My concern is that if we now proceed with other related amendments without adequately resolving the question of inspection authority, when the final bill is brought back an amendment might be offered and accepted which again alters that authority, thereby making the other judgments arrived at inconsistent.

Mr. FITHIAN. I am completely in agreement with the latter.

I would suggest that the last vote in this committee has been preponderantly in favor of Federal inspection at export terminals.

Therefore, that should be the amendment circulated because that represents the last vote in this committee.

The CHAIRMAN. The only difficulty with that is that it would not be an amendment to the present committee print but, rather, a reaffirmation.

I do not really think that members' rights would be endangered if an amendment changing that position is offered and if you vote no. If the majority votes no, then we return to the language and position of the present committee print calling for export inspection to be performed by Federal employees.

Mr. FITHIAN. I am not sure I fully comprehend that logic.

The CHAIRMAN. You wouldn't offer an amendment to reaffirm the present character of the committee print. You would offer an amendment to change it.

Members are free to vote as they want to. If they reject the amendment by a majority vote, the tentative decision favoring all Federal export inspection remains as the committee's position.

Mr. FITHIAN. Then should I conclude that the instructions to the committee would be that anyone who has an amendment pending to deal with the basic question as to whether or not we will have Federal inspectors at export terminals, then he should have it prepared and circulated by Monday?

The CHAIRMAN. If possible.

I do not want to hold all members to that. If somebody wants to strike a word or change a few phrases, that would not require the distribution of printed copies.

If on the other hand, you have a major amendment which is rather complex, it would be very helpful if it were offered in writing so that it could be circulated.

My concern again is that in a vote of 19 to 10 only 29 members register their opinion. We have 42 members on this committee.

I think it would simplify things if everybody were on notice that this central issue is going to be determined once and for all.

I am certainly not going to offer another amendment if the committee's judgment is to stay with what we have.

Mr. FITHIAN. I perhaps was under a misimpression. I thought the 2 to 1 affirmation by this committee that we were going to have Federal inspectors at export terminals was conclusive. That is why I moved on to the weight section and other matters. But I defer to the judgment of the Chair.

The CHAIRMAN. The rules of the committee permit any member to offer an amendment to the bill as well as the committee print.

I simply want to get the judgment of the maximum number of committee members on what I regard as the central issue before us.

Then we can dispose of the other amendments in a more logical and persuasive way.

Frankly, I do not think that members should object to having that central judgment made by as many of the members as care to vote on it.

Mr. KELLY. All of these figures are flying around. I am trying to catch up.

As I understand it, you are saying this. There were 13 people who did not vote on this 19 to 10 issue and they can gallop up the last day and turn things over. Even if they only turn upside-down parts, it would adversely affect the rest. They could make a shambles out of the whole bill.

What you are trying to do is get the membership here at an early stage in the game.

That seems orderly. It seems as though the number of people who were missing before—it might be a basis for the chairman's position.

I would like to ask another thing.

This is a technical inquiry. If we are going to completely federalize the system, would it be possible for us to perhaps have an amendment establishing a new Federal agency under the purview of the Department of Agriculture? Would it be permissible to name someone specific as the head of that in the bill?

The CHAIRMAN. The committee cannot legislate executive appointments.

Mr. KELLY. Thank you.

The CHAIRMAN. I think it would be useful, if members are preparing amendments, to send copies to Mr. Bor's office or Mr. Murray's office. We can have them duplicated in sufficient numbers for the committee.

I appreciate the excellent and conscientious attendance we have had while considering this legislation. The committee has a great deal of work before it, such as the Packers and Stockyards Act amendments, food stamp legislation, and Mr. Wampler's agricultural research bill. Because of the requirements of the Budget Act, these bills must all be given emergency treatment so that they can be reported by May 15.

Considering all of these things, we ought to be able to complete our work on this legislation next week except for what I would regard as a final perfunctory act of reporting out a clean version under whatever cosponsorship members wish to attach to it.

Mr. Harkin?

Mr. HARKIN. Are you ready to close the meeting?

The CHAIRMAN. Yes.

Mr. HARKIN. If we are going to finish this bill next week, it has come to my attention that there is a bill being introduced in the Senate, as I understand it, today. I think it will be introduced today.

I understand also that it has some bipartisan support in the Senate. I understand that Senator Dole is supporting it. Chairman Talmadge is supporting it. It has other bipartisan support on the grain inspection procedures.

Therefore, at an appropriate time next week, after all members have had a chance to get the bill and look at it and after we have gone through our procedures, I at this time intend to offer that Senate bill as a substitute for the bill that we have here.

This would not be to open up the whole thing for discussion and prolong it for 2 or 3 weeks and go through it again. I don't want to do that again. I don't want anybody to think I'm trying to do that. But I want to get some indication as to how this committee feels that we might be close to the Senate bill.

The CHAIRMAN. The gentleman would certainly be recognized for that purpose at an appropriate time. However, I do think it would be helpful to delay consideration of this matter until next week so that the committee will have an opportunity to review the Senate bill, which has just been introduced.

Mr. SEBELIUS. I move that the committee adjourn until Tuesday next.

The CHAIRMAN. Without objection, the Committee on Agriculture will stand adjourned until 10 o'clock Tuesday morning.

[Whereupon at 11 :30 a.m., the committee adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, MARCH 2, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Melcher, Mathis, Bergland, Bowen, Breckinridge, Richmond, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, Jenrette, D'Amours, Thornton, Wampler, Sebelius, Findley, Thone, Madigan, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; John R. Kramer, special counsel; Gene Moos, staff analyst; John M. Lindley, Glenda Temple and Susan Bell, staff assistants; L. T. Easley, press assistant; Weldon Barton and Leon Geyer, staff consultants, Subcommittee on Domestic Marketing and Consumer Relations; Leighton Lang, staff consultant, Subcommittee on Oilseeds and Rice; Alan Gray, staff consultant, Subcommittee on Livestock and Grains.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee meets for further consideration of proposed amendments to the U.S. Grain Standards Act.

The Clerk advises the membership that a quorum is present. Without objection the record will so indicate.

At our last meeting, I announced I would like to definitively resolve the question of inspection authority before proceeding to consideration of the other amendments which are pending. I think all of the members have been advised of the amendment which I intend to offer at this time.

I shall ask counsel to read the proposed amendment.

Mr. BOR. The amendment offered by Mr. Foley is an amendment to page 3 of the committee print.

From 17 to the beginning of line 23 has been stricken. The Foley amendment would supplant the language which formerly had a comma in that section and insert a period. The language would read as follows:

If the Secretary determines that a State Agency is qualified to perform official inspection in accordance with the criteria of subsection (f)(1)(A) of this section, the Secretary may, in his discretion, delegate authority to the State Agency to perform all or specified functions involved in official inspection

(other than appeal inspection) at export locations subject to such rules, regulations and instructions as he may prescribe. Any such delegation may be revoked by the Secretary, at his discretion, at any time upon notice to the State Agency without opportunity for a hearing.

The CHAIRMAN. This section and this proposed amendment are designed to establish a uniform Federal inspection standard for all grain exported under the act at export ports.

I want to make one thing specific. In offering this amendment I am not proposing that there be two kinds of inspection, Federal inspection or State inspection.

The standard here is to be one standard of Federal inspection under the authority of the Secretary of Agriculture.

This proposed amendment would give the Secretary discretionary authority to conduct that Federal inspection through either employees of the U.S. Department of Agriculture or through employees of a State inspection agency, but under terms and conditions and instructions laid down by the Secretary of Agriculture.

I think that is the essential point I want to emphasize here. This is not talking about two different universes of inspections but it is talking about one inspection system, one inspection standard, one inspection responsibility, and that responsibility is with the Secretary of Agriculture.

The implementation of it can be done through either direct implementation of the USDA employees or employees of a State agency if the Secretary determined in his discretion that that agency was capable of carrying it out, and under rules, regulations and instructions which the Secretary would promulgate.

It is not a cooperative agreement in the sense that cooperative agreements are commonly understood. It is more properly seen as an agency-principal relationship, the principal being the Department of Agriculture and the other being the State agency.

The language is specific—the Secretary does this at his discretion. He does not have to do it for all States. The effort here is to give him discretion when he thinks it is useful to do it with a State agency and to allow him not to do it with a State agency but do it through USDA employees directly when he so determines.

The last sentence of the amendment is designed to allow the Secretary to withdraw that agency relationship at any time if in his discretion he feels that the act would be better served by direct implementation of the inspection through USDA employees.

Mr. VIGORITO. Mr. Chairman, I intend to vote for the pending amendment.

Previously, I voted in support of the motion to provide for all Federal inspection and grading at the port elevators, and I remain convinced that we must completely replace private inspectors in the grading of grain for export—if we are to eliminate the corrupt practices at port locations.

However, we have not had an opportunity until this time to vote on a proposal which would replace private inspectors with an essentially Federal system, but with provision for possible continued involvement by the States at some export points under delegation of authority and continual supervision from the Secretary of Agriculture.

I think that this proposal achieves the desirable goal of concentrating final authority and responsibility in the Secretary of Agriculture, while at the same time allowing States that have been operating in this field in a competent and above-board fashion to continue to do so.

There is only one location, to my knowledge, in which there has been any problem involving State personnel, and the pending amendment in my view provides the means to handle that situation through much closer Federal direction or through revocation of the particular State's authority to perform grain inspection.

Mr. Chairman, for these reasons I think that the pending amendment is the best course that is open to us, and I will support the amendment.

The CHAIRMAN. I thank the gentleman from Pennsylvania.

Mr. Findley?

Mr. FINDLEY. Mr. Chairman, I would like to ask you, as author of the amendment, several questions. I am sure we all recognize the desirability of uniformity nationwide in inspection policies, practices, deeds, and so forth.

If this amendment is adopted, could the Secretary require that the State agency abide by whatever Federal policies and practices are established on fees for inspection?

The CHAIRMAN. The answer is "yes."

Mr. FINDLEY. It is my understanding that the State of Washington does impose fees which more than cover the cost of the service.

The CHAIRMAN. That is right.

Mr. FINDLEY. So it does provide some revenue for other purposes.

Under the terms of the amendment would it be possible for the Federal Government to require an adjustment in that fee schedule so that fees charged would cover only the cost of service rendered?

The CHAIRMAN. The answer to the question again is "yes."

The Secretary, as this is drafted, would have complete discretion as to whether a State would be allowed to undertake delegated responsibility of performing Federal inspection. The question of fees would be one element in his decision.

Under this amendment he could also withdraw that delegation of authority at any time by merely giving notice to the State.

Obviously if he withdraws that authority inspection by Federal employees would replace State inspection. This substitution could not take place overnight.

The thrust of this amendment is that all the reins of control over the type, manner, training, standards, qualifications, fee schedules, and so on, remain with the Secretary. Therefore the same uniformity of standards and guidelines for inspection practice would be possible whether the Secretary provides inspection directly through Federal employees or through State employees.

Mr. FINDLEY. If the chairman would——

The CHAIRMAN. Excuse me.

There is only one specific requirement in the draft as to fees. The Secretary is required to collect fees from the States, local governments, or private inspection agencies at inland points as well as at export

ports sufficient to cover the Federal costs of inspection at the field office level and below.

I think it is certainly within the capacity of the Secretary under this amendment to do that.

Mr. FINDLEY. Is it the desire of the author of the amendment that to the extent practicable that the Secretary adopt and follow uniform practices on fees nationwide?

The CHAIRMAN. Yes; to the extent practicable.

There may be some differences regionally which require some slight differences; but the aim of the amendment is to establish, to the extent practicable, uniform standards and fees for export inspection.

Mr. FINDLEY. And in addition to that the aim of the amendment would also be to establish uniform standards in the employment of inspectors. Is that so?

The CHAIRMAN. That is essentially correct. I do not intend, however, by the amendment that all inspectors be subject to precisely the same employment standards, that is, Federal retirement provisions or Federal salary requirements necessarily.

Mr. FINDLEY. Qualifications?

The CHAIRMAN. Yes; I think the amendment implies that the Secretary would have authority to set standards for qualifications and expertise.

As to establishing identical conditions of employment, this is not my intent. At least not necessarily so. The Secretary could determine that anything relating to qualifications has to be done a certain way.

It is my intention that the Secretary have overall discretion as to whether or not to use a State agency to conduct inspection.

My time has expired.

The gentleman from Texas.

Mr. POAGE. Like the gentleman from Pennsylvania, I simply wanted to state that I did not support the idea of having the Federal Government maintain inspection at the ports. I think there is no reason for the Government trying to pass upon these private trades and I think it is much better to let the people who are buying and selling grain determine among themselves what they are buying and what they are selling and put the responsibility upon the foreign buyer.

However, the committee overwhelmingly determined that we should have this kind of supervision on the part of the Government and tacit Government guarantees of the grades.

Having made that decision, then I think that the only wise course is to follow the course suggested by the chairman and allow, or require, the Secretary of Agriculture to accept responsibility for the entire export inspection activities and allow the Secretary to use the forces of State agencies where he finds that that is desirable.

In other words, if you would simply tie the Secretary of Agriculture down to his own civil service force you would, in the first place, make it impossible, I think, for some time to carry on the inspection. You would have a hiatus of probably a couple of years before you would get an inspection system. You would have another major scandal on your hands during that period of time. Then, after that period of time, it still seems wise to me that we give the Secretary the authority to use well-established inspection forces which a good

many States have, forces in many instances which have been performing well and had a better record than the Federal Government itself and there have been no charges of wrongdoing. To say they should not be allowed to use these people who have done such an excellent job would seem to me to be self-defeating.

I am therefore in favor of the amendment as proposed by the chairman of the committee and I expect to support it and hope that the other members will support it.

The CHAIRMAN. I thank the gentleman.

Mr. Moore?

Mr. MOORE. I have an amendment at the desk I want to offer to your amendment. Is it proper for me to present it at this time?

The CHAIRMAN. It would be in order at this time.

Mr. MOORE. I would like to ask it be passed out.

The CHAIRMAN. The gentleman is recognized.

Mr. MOORE. Basically I support the chairman's amendment over the existing language. I would seek to amend the chairman's language to add, and I think you will see this in the amendment when you receive it, in addition to "State Agency", "other governmental organization, board of trade, chamber of commerce, or grain exchange."

I think the point is obviously clear. The point I am trying to make is that I want to get the chairman's amendment closer to the administration's basic position which would allow most of the grain inspection agencies existing now to continue if the Secretary deems that they are qualified or capable.

The amendment does not allow for any private profit agencies. I have excluded them, people like the grain companies, from making inspections. I don't think they should.

Mr. Harkin and I had an exchange at the last meeting concerning this point. In my amendment, I am referring to organizations which now are basically not connected in any way with those who are brokering, buying, or selling grain, and therefore there should not be any conflict of interest between these organizations.

My simple reasoning is that if you can trust a State inspector, why can't you trust one who works for a board of trade or a chamber of commerce?

I believe these agencies serve a public purpose beyond simply the situation of inspecting grain.

The additional report I pass out shows what the New Orleans Board of Trade has done with the profits it made in 1975 from grain inspections.

You will see where that money went. It went to support a number of public projects, agencies, and bodies.

I think we have to realize this—when you take these people from the grain inspection business you deny financial support to other agencies and businesses that serve the public.

In the case of the Greater Baton Rouge Port Commission, the net moneys they get prevents them from seeking State tax money for their operations. If they don't have the money they get from grain inspections, they have to go to the legislature to ask for a grant or tax moneys to operate because the port operations do not make a profit with the exception of the grain inspection money. This gives them enough money to break even, and that is all.

I think that you can trust these agencies. All that has happened has been good. Dishonest people have been brought into the open, and have exposed the weaknesses in the system, but I think all of the weaknesses can be improved with USDA strengthening its supervision and regulation.

If you look at the chairman's amendment, it is strong, and I have discussed this strength with the agencies back home. The fact that they can have their authority to inspect withdrawn at any time, without any due process, is extremely strong, much stronger than the situation is now.

I think therein lies the protection for anyone in the farming business or anybody in the grain-buying business. The Secretary has unusual power to take away the ability of any of these agencies to inspect grain, and grain companies have been eliminated under the chairman's amendment.

In addition, I will support amendments to strengthen the penalty section and strengthen the conflict of interest section to see that we have no future problems.

In our interest to really improve the system, let's not go so far as to wipe out agencies that are in themselves not evil but are public service organizations, and are using their funds to serve the public. Let's not wipe them out. I don't believe there will be any more honesty in a State agency, a Federal agency, or a chamber of commerce because they are all men we are "legislating around." You can only have either an honest or dishonest man inspecting grain.

We have to deter them from being dishonest. I would ask you give my amendment consideration to allow existing agencies to do this. Many of these agencies have had people indicted, but it is a fraction of their total work force. None of these people who run the boards of trade gain anything personally. They don't even draw a salary or any kind of compensation for the work and time they spend.

To say these people are dishonest and can't be trusted to run a system is unfair. We have seen instances where the Federal inspectors are on the job 24 hours a day at ports and these very things still happen. As a matter of fact, I was given information in one case, and the GAO report alluded to it, that one Federal inspector was on the take himself at one of the Louisiana ports.

Therefore, I am trying to give these people a chance to continue to serve the public and do the job they are currently doing and let the Secretary of Agriculture, if he does not feel they should stay in the business, take it away from them without due process. If he feels they are unqualified, then he can take it away from them.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Melcher?

Mr. MELCHER. Thank you, Mr. Chairman.

I think all too often we say, "I reluctantly oppose the amendment."

The CHAIRMAN. Let the record show that the gentleman from Montana is not a bit reluctant.

Mr. MELCHER. Let the record show I enthusiastically oppose the amendment of my friend and chairman. I think it flies in the face of the recommendations we have received from the General Accounting Office in their very detailed report and flies in the face of what our farmer-producers are asking us to do in our inland States.

I think there is a much larger problem to consider here than what the individual States, which happen to be export States, want.

I, too, visited with the New Orleans Board of Trade. I, too, have visited with the person in the State of Washington who is in charge of the inspection system there. It is a much larger problem than what the States want.

I am very reluctant at this point to allow the Department of Agriculture this discretionary power of determining who inspects grain which goes into export.

They have that discretionary power now in a sense. They are the ones supervising the New Orleans Board of Trade and the private inspection groups down in New Orleans. The Department of Agriculture is the group right now supervising, rather loosely, the inspection of grading and weighing of grain.

We did not ask for this problem. We did not ask the committee to be confronted with a national bill dealing with this. It was forced upon us. It was forced upon the American public and the American farmer by, to put it simply, the crookedness which has transpired over the past several years.

However, we now have the responsibility of cleaning up the mess, getting uniformity, and regaining worldwide confidence in American grain as to its weight, grade, and condition.

I think to regain that confidence, Congress, beginning right here in this committee, and in the Senate Agriculture Committee, we will have to act rather strongly, rather emphatically, and very much to the point.

I think to regain that confidence will require a very strong bill which does the delegation of the job of inspection of foreign export grain.

I will oppose the amendment, sir, and ask it be defeated. I think it is our responsibility to act strongly in this field. I think the amendment fails to do so.

I yield to the gentleman from Nebraska.

Mr. THONE. I share the sentiments of the gentleman from Montana. I filibustered quite a bit on this subject already and I will not harangue the committee again this morning.

Mr. Melcher, do you envision, if we would accept the Foley amendment, that there might just occasionally in the future be some pressure applied to the Secretary of Agriculture to reinstate a type of inspection that really should not be allowed?

Mr. MELCHER. I know that would be the case, and I also know that the semiprivate or semi-State agencies would attempt at the various points to become State agencies. I think it would be an unending problem of attempting to show to the Secretary of Agriculture that they are qualified to do so and should do so and should be left alone. That would defeat the very purpose of assuring the people who buy American grain, our foreign customers, that we really have cleaned up the mess.

Mr. THONE. So the record is clear on this and so we are totally fair—I assume the gentleman from Montana would agree with me that current inspection by State agencies in the Northwest, and at some point in the interior, Kansas, for example, are exceptionally well and honestly done.

Mr. MELCHER. I do not disagree with that. I think it is only fair to affirmatively say that many States have performed very well without hint of scandal.

The CHAIRMAN. The time of the gentleman from Montana has expired.

The gentleman from Texas, Mr. Hightower, is recognized; next the gentleman from Florida, Mr. Kelly, and then the gentleman from Minnesota.

Mr. HIGHTOWER. Responding to Mr. Melcher's comment that the national bill was forced on us, I would like to say that a national bill is before us, but I hope a national bill has not been forced on us.

I hope we will not say that in order to respond to a scandal that is generally localized, in spite of some of the comments in the GAO report, that we have to have a national answer for it.

I do not believe that even the most careful reading of the GAO report would justify saying that we have to federalize all exports and that that is the answer.

I also detect, from our colleague's comments as to the GAO report, that we may hurt their feelings if we do not go along with their solution.

The GAO is an instrument of Congress. They are a creature of Congress. They were assigned to do a job for the Congress, and they have done as best they could to meet what they thought would be our requirements in their reports. However, I do not think that we can say that just because they recommend federalization that they necessarily have the answer.

Then, in response to Mr. Thone's comment with regard to pressure on the Secretary of Agriculture to approve some State inspection which might not or ought not be approved, I really cannot see that is a strong argument at all because if there is going to be any pressure on the part of any group to the Secretary of Agriculture it would be the in-house pressure on the Secretary to defend his own people. I think that is certainly more to be feared than some pressure from some group in Washington or some other State that "We want you to approve our system of inspection" or whatever.

I really cannot see either one of these questions as far as opposition to the chairman's amendment.

I very enthusiastically support the amendment.

Mr. MOORE. If the gentleman would yield—I concur with your comments. I point out to my respected colleague from Montana, you have to trust somebody, sometime, somewhere. You cannot devise a system in a democracy that is entirely mechanical. The human element is very much a part of this.

The Secretary can be trusted. The Secretary, the entire USDA, and the entire country have learned that this system needs to be monitored and watched closely.

I feel safe to say any Secretary worth his salt from here on out will watch this closer than it ever has been watched before.

Under an all-Federal system, once again the Secretary is the one who runs the system, so in the end result the buck stops with him. All we can do is try to devise a system as fair and good as possible.

I think my amendment to the chairman's amendment will make for a better situation.

Mr. HIGHTOWER. We have no more assurance now, if we make these changes in the act, than previous Congresses have had with the act which existed prior.

As I understand it, the Department has not fully carried out the provisions of the law even up to now.

Part of the problem was they did not have the complement of inspectors they were authorized to have or supposed to have.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. Judge Kelly?

Mr. KELLY. Mr. Chairman, it is my intention to support your amendment because it is not so bad as the committee bill, and to support Mr. Moore's amendment because it is better than the Chair's amendment.

However, the clear truth is this—we are in the process of trying to protect our foreign markets by seeing that the grain shipped from the United States is of uniform quality, that the Federal Government can do this for us, and that, therefore, the story will have a happy ending.

We have, however, an unending supply of goods which flow out of this country. Are you going to have Federal inspectors attend to that, also?

I am not nearly as worried about the goods which flow from the United States to Russia as I am about the goods which flow from Michigan to Florida. Are we also going to have Federal inspectors protect the constituents of the Fifth Congressional District of Florida from bad automobiles?

The answer is not to have Big Brother do this for us. The answer is to buy the automobiles from Michigan which seem to perform the best, take our chances in the free enterprise system, and let the foreign buyers find out which merchants in this country are reliable and deal with them.

There will not be any substitute for relying on the people by passing laws.

Mr. POAGE. The gentleman made that speech 3 days ago. My proposal got only three votes.

Mr. KELLY. The gentleman from Texas has bestowed upon my humble remarks far more than they deserve. I thank him.

Clearly this is a fool's errand to try to save man by passing laws. What we can do that makes some sense is insist that prosecutors enforce the laws with some vigor and integrity and cause the penalties to fit the crime perhaps more completely than they now do, and then to cause the credibility of everything we do to be enhanced by the fact we are not going to hire more people or build more buildings or spend more taxpayers' money.

This, then, is a test. What we are doing here will not meet that test. We are clearly intending to hire more Federal employees on the theory that the Federal employees will do better than other people. That just absolutely makes no sense at all.

I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. Mr. Bergland?

Mr. BERGLAND. Thank you, Mr. Chairman.

I must oppose the chairman's amendment and the amendment offered by the gentleman from Louisiana because I think the proposi-

tion offered by the gentleman from Louisiana merely compounds the difficulty which is introduced by the amendment offered by the gentleman from Washington.

Mr. Chairman, of the 30 active ports in the United States, 16 have State inspection, 14 have private inspection organizations.

The States of Illinois, Michigan, Ohio, and Texas have no State inspection whatsoever. They have combinations of services provided.

The amendment offered by the gentleman from Louisiana would allow the franchising of 10 of the 14 private inspection agencies currently in business at the export locations.

I shall not list them all but among them are the Galveston Traffic Exchange, Corpus Christi Exchange, Baton Rouge Port Commission, New Orleans Board of Trade, and others.

My problem with your amendment, Mr. Chairman, and the proposition offered by the gentleman from Louisiana is that I think we need to have a standard uniform code of grading in all of the export locations and that the surest way of maintaining a uniform code of conduct, of ethics, and of grade standards is if we have the same kind of direct supervision at all ports. By franchising agencies, whether they be a board of trade or a State agency, we tend to diminish the kind of uniformity which I think is essential if we are to regain and rebuild confidence in our export business.

The Armed Forces have learned it is useful to transfer commanding officers from time to time for obvious reasons.

I think it is also important that from time to time Federal inspectors be rotated.

In reading the report of the GAO and some of the testimony provided to this committee and the other body, much of the difficulty has arisen out of friendships which have developed between inspectors, supervisors, samplers, ship owners, and others. Obviously when persons work together and socialize together, they develop friendships. Sometimes those friendships tend to weaken what ought to be a legitimate business arrangement.

By having an all-Federal system at the export locations we have the opportunity to transfer persons from time to time, and I would assume this would be done, as is generally done in the Internal Revenue Service and other regulatory bodies of the U.S. Government.

By franchising States and private agencies you destroy the opportunity to transfer an inspector from one port to another after an appropriate period of time.

I therefore, Mr. Chairman, argue we ought to maintain uniform Federal service at the export locations and the amendments ought to be defeated.

Mr. MOORE. If the gentleman will yield, I have great respect for the gentleman from Minnesota and I agree with you that uniformity is what we should look for, uniformity and honesty. We are all striving for that.

However, the things you just called for and the GAO report called for require regulations. USDA indicated they can do this under the amendment I propose to the amendment the chairman proposes. USDA has the power to say, "If you do not rotate and meet our rules, if you do not follow these rules to the nth degree, you lose your license."

The same thing can be done here. They both require regulations being set up by the Secretary of Agriculture.

Mr. BERGLAND. It is true that the Secretary retains final control over these matters? My point is that why go through this exercise?

I see no advantage in it. I see an advantage in maintaining control from the very beginning and not delegating this authority because I think it serves no good purpose. I do not believe it would reduce the cost to the consumer, or the taxpayer. It only weakens the system in my judgment and I cannot see it is worth the candle, frankly.

Mr. MOORE. I think it can be done as easily through existing agencies and not go to the expense of an all-Federal system and also maintain the good the local agencies can perform and are performing now. It is just a matter of which is better, an all-Federal system or maintaining some control at the local level under the auspices of the USDA.

I think either will work admirably well.

Mr. BERGLAND. In the testimony provided by the Department of Agriculture, it was conceded there would be no difference appreciably. The cost would be the same.

Mr. MOORE. I recall that. There is a great deal of confusion on this point.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. FITHIAN. Parliamentary inquiry.

The CHAIRMAN. Please state it.

Mr. FITHIAN. Would it be possible for members to speak to the Foley amendment after the vote on the Moore amendment?

The CHAIRMAN. The Chair has been advised that in the event the Moore amendment does not carry, another amendment will be offered to the main pending amendment.

Accordingly, members can strike the necessary number of words and speak either to the amendment to the amendment or the main amendment.

The answer is yes.

Mr. FITHIAN. Thank you, Mr. Chairman.

The CHAIRMAN. The Chair wishes to state that he is reluctantly opposing the Moore amendment. I think there is a definite advantage to adopting the uniform standard of public inspection, and I think there are some valid reasons for limiting the Secretary's delegation of authority to State agencies only.

Accordingly, I will vote against the Moore amendment myself and hope that a majority of the committee would support the amendment which I have offered which will allow that delegation to be made only to State agencies.

I want to emphasize the word "delegate" because that term was deliberately chosen instead of designate, or license, to describe a system in which the Secretary maintains overall control over Federal inspection and which, to the extent practicable, is based on uniform standards, qualifications, and inspection procedures at all export ports.

Mr. FINDLEY. I would like to speak on the Moore amendment, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized.

Mr. FINDLEY. There is one aspect of this which the committee has not yet considered, and that is a policy question of how a grain inspec-

tion service should be financed and whether we should finance activities other than grain inspection. I don't recall this point being raised.

It was not prominently stated. Mr. Moore, in advancing his statement, circulated a list showing net earnings and money contributions of the various nongovernmental, or the activities which are subject to this amendment, and I suppose we can expect that one of the purposes of this amendment would be to protect the revenue from inspection services listed on this sheet.

Personally it seems to me that if we are to use revenue of grain inspection to finance activities other than grain inspection, that is one aspect the members should consider carefully.

The testimony before this committee has shown that the inspection services rendered by some boards of trade and other nonpublic organizations have been very good, in fact at a higher level of integrity than some of the State inspections and perhaps Federal, too.

Nevertheless, that leaves the question of whether there should be diversity of inspection at ports.

All exports are Federal in their character. They are national. They are not State or local but Federal and national.

I am inclined to think that at some stage we ought to have it all one thing, and logically I think it ought to be all Federal inspection.

Getting there from here is not an easy matter, and it will take various stages.

It seems prudent, at least from my viewpoint, to have as little diversity as possible in the mode of inspection. I say that with due respect to the boards of trade and other agencies which have done a very good job at many ports.

Mr. MOORE. I simply point out that USDA and the GAO report-makers have gone over these lists of who got this money. They had no complaints about it whatsoever. I don't see that as a problem.

They don't go in for the idea of making money. They charge a set fee. I don't think that is really a problem.

However, I appreciate the gentleman's concern.

The CHAIRMAN. If there is no further discussion, the question occurs on the amendment to the amendment of the gentleman from Louisiana.

Mr. MOORE. I ask for a record vote, Mr. Chairman.

The CHAIRMAN. All those members wishing to support the Moore amendment will, when their names are called, respond "aye"; opposed "no."

The Clerk will call the roll.

[The rollicall follows:]

Ayes: Representatives Poage, de la Garza, Mathis, Bowen, Hightower, Wampler, Madigan, Jeffords, Kelly, Moore.

Nays: Representatives Vigorito, Melcher (by proxy), Bergland, Brown (by proxy), Litton (by proxy), Breckinridge, Richmond (by proxy), Nolan (by proxy), Weaver, Baldus, Krebs, Harkin (by proxy), Bedell, McHugh, English, Fithian, D'Amours, Thornton, Sebelius, Findley, Thone, Grassley, Hagedorn, Foley.

The CLERK. Ten ayes, 24 nays.

The CHAIRMAN. There being 10 ayes and 24 nays, the amendment is not agreed to.

The gentleman from Iowa, Mr. Bedell, is recognized for an amendment to the amendment.

Mr. BEDELL. While these are being passed out I shall read it.

Immediately before the period at the end of the first sentence of the material proposed to be added by the Foley amendment insert the following:

Except that the Secretary may not delegate such authority to any State agency—

(1) which is created after the date of enactment of this sentence, unless such agency has demonstrated its competency, thoroughness, and honesty in inspecting grains at locations other than export port locations for a period of three years; or

(2) which has been found guilty, or had employees who were found guilty, of violating the provisions of this Act during the three-year period immediately prior to the date of enactment of this sentence, unless three years have transpired since such agency or employee was found guilty.

This is to say only those State agencies which have been in existence and have proven themselves capable of properly inspecting grain at export locations can be considered upon the enactment of this act.

The reason for my amendment is pure and simple. I share the concern that exists over the possibility of pressure being brought on the Department which would cause them to authorize State agencies which they would not otherwise authorize.

I think we have seen clearly this has happened in the past in other matters by the Office of Management and Budget and certainly by others. I believe we should remove any possibility that they would authorize State agencies wherein there had been misconduct by those State agencies or in cases where those State agencies had not proven themselves capable of properly inspecting grain.

I think there is a good argument to be made for those State agencies which have proven themselves and which we have seen are doing a good job. I think that the chairman makes a good point in that regard.

However, I do not think that means we should certainly say we will consider for authorization State agencies which have already been convicted of misconduct in this matter nor do I believe we should authorize State agencies without having it proven they can properly perform these functions.

I yield back the balance of my time.

Mr. POAGE. I would like to point out that Texas does not have a State agency. There are other States in the same position.

It is hardly fair to brand us as a bunch of thieves when we have never had an opportunity to thief.

To assume that anything we were to create would be so corrupt that the Department of Agriculture would be prohibited by law from dealing with it is just kind of an insult to my State. I hope this committee will not heap this upon us.

There has been no State agency in my State. Obviously the State agency in my State could not have been guilty of any of these things.

To assume we will be guilty if we were to create a State agency in the future seems to me to be just as gratuitous and an insult to the State.

I doubt we will ever create a State agency. I don't know why we should be picked out and say 14 of you States must be rascals because you have never proven you are not.

You have no certificate that you are honest because you never had a State agency to prove anything with. Therefore you must be dishonest.

To me that is just the kind of thing I hope this committee will not pass.

This amendment assumes that any State which has not engaged in these practices in the past must be deficient.

Mr. WAMPLER. I agree with the gentleman.

Mr. BERGLAND. I cannot attribute any thoughts to the gentleman from Iowa, but—

Mr. POAGE. I do not say that is the purpose of the gentleman from Iowa but that is what the amendment does.

Mr. BERGLAND. I see in his amendment sort of an apprenticeship being required as a condition of eligibility for Federal inspection. I do not see anything here which in any way would imply something less than honorable motives on the part of the State of Texas.

It does provide for an apprenticeship program which has some virtue.

Mr. POAGE. Apprenticeship is just like the young lady who wanted to go out and swim. Her mother told her to go, hang her clothes on the hickory limb but don't go near the water.

How do you get an apprenticeship when you cannot engage in the business? You cannot engage in the business until you have proven yourself.

Mr. BEDELL. I am quite disturbed over the indication that the gentleman feels this is any indication there is any feeling of charges against any State or State personnel. I cannot even tell you the 14 States who are in it.

However, we have interior inspection and inspection at the port levels. It seems to me we have clearly indicated in this committee we are very much more greatly disturbed over the situation at the port level than we are at the interior points.

The purpose of this amendment is simply to say that those States which are not already engaged in this manner will get apprenticeship at the interior points which are expected to be made available according to legislation that is passed, and after that apprenticeship they then, if they have proven themselves capable, will be licensed at the export points.

There are many of us who are very apprehensive about how the export points will be handled if we open this up because of the conditions which have already existed there.

Certainly the charge that this is some indication that someone feels there is any crookedness involved in any particular State in my opinion is completely unfounded and certainly I had no intention whatsoever of implying this in any way.

Mr. POAGE. I am sure you would not do that, Mr. Bedell, but you leave the 14 States in a terribly embarrassing position.

The CHAIRMAN. Mr. Vigorito?

Mr. VIGORITO. Thank you, Mr. Chairman.

I agree with the gentleman from Texas, though I do believe Mr. Bedell has a good point.

However, I still firmly believe that we have to consider anyone innocent unless proven guilty. That is the foundation of our laws.

As far as someone who already has been found guilty, I am in favor of his going to jail. After his jail term, I am not in favor of his going back to the old stand to do business. He would have to go elsewhere.

Therefore, I will oppose the amendment to the amendment by the gentleman from Iowa, Mr. Bedell.

The CHAIRMAN. Mr. Bowen?

Mr. BOWEN. I would like to direct a question to Mr. Bedell. I am not greatly familiar with the grain inspection procedures because I have not been involved in them.

Take a port in question, such as New Orleans, where there is not much wheat grown. How would the State agency acquire the kind of experience you would want them to have other than in the Port of New Orleans?

There you are putting out of business the private agency which has been there before and therefore you must train a new State agency to do the job.

Where are they going to acquire that?

The grain comes down in a barge from Iowa to New Orleans and it is graded and inspected for export.

What will they do during that 3-year period to acquire the expertise necessary to qualify them under your amendment?

Mr. BEDELL. This expertise is the same thing. In Iowa we have a grain exchange in Sioux City which samples grain, inspects grain in the same manner as it is inspected at the port level.

We have an agency in my district in Fort Dodge.

Mr. BOWEN. That is because you are a grain producing State. In Louisiana how would the State agencies acquire that experience, 3 years of experience, other than being involved?

Mr. BERGLAND. If the gentleman would yield, the State of Louisiana is already in the business of inspecting grain. They have the experience. They have been at it more than 3 years and presumably would not be affected by the first portion of the gentleman's amendment.

The States affected are Illinois, Michigan, Ohio, and Texas, which do not have State inspection at any point, and therefore they would be required to go through a 3-year apprenticeship.

Mr. BEDELL. Those States certainly would be involved in inland inspection of these same grains as would be involved at the port level.

Mr. BOWEN. I would like to conclude by endorsing the views of Mr. Poage and state my opposition to the amendment.

Mr. BERGLAND. I have a question I would like to direct to counsel.

There have been a number of persons indicted and convicted and some who have pled guilty to certain charges in this general area.

I am not sure they have been convicted of violating the Grain Standards Act. In some cases I know it is perjury, in some fraud and robbery under certain criminal titles of the State and Federal Code.

Have there been instances of conviction under the Grain Standards Act? Because they have been misdemeanors the prosecutors usually look for a tougher charge.

Mr. BOR. I believe that in connection with the pleas of guilty, some of the pleas have been under provision of title 18 of the United States Code and some of the pleas have been under provisions of the Grain Standards Act.

I shall defer to the gentleman from the Department of Agriculture who probably is more intimately familiar than I am with the indictments.

Mr. DONNAUD. I am John Donnaud, with the Office of General Counsel, Department of Agriculture.

Yes; there have been some people who have either pled guilty or were convicted for violations of the Grain Standards Act. Some of these were in conjunction with felony pleas as well.

I do not have the number at this time.

Mr. BERGLAND. Do you recall offhand whether or not any of these might have been employees of a State government?

Mr. DONNAUD. To my knowledge nobody has been convicted at this point. There was an employee of a State government. There will be some charged with violations.

Mr. BOR. Mr. Donnaud also confirms that some of these pleas have been in connection with violations of title 18 of the United States Code.

If my memory is correct, some of these violations are as a result of deceptive weighing practices rather than violations of inspection laws.

Mr. BERGLAND. I yield back the balance of my time, Mr. Chairman.

Mr. McHUGH. I have a question. This relates to the same matter.

As the language now reads "except that the Secretary may not delegate such authority to any agency which has been found guilty," it is conceivable and quite likely that individuals would be found guilty but that a State agency would not.

Under this language am I correct in assuming you might have in any State agency a large number of individuals who were convicted but the State agency would not be convicted—let me interrupt myself.

There is a second clause which Mr. Bedell has pointed out: "or had employees found guilty."

I presume that covers the situation we are talking about.

Thank you.

The CHAIRMAN. You have a question?

Mr. BEDELL. I have a question. It was certainly my intention, and very possibly there is a mistake in drafting the second part—I meant this to be in violation of the intent of this act, which is that we should have proper grading of our grain.

If there is a loophole in the way the second section is worded, as was brought out by Mr. Bergland, I certainly would feel the intent of the amendment to cover that loophole should be recognized. We should vote on it with the understanding that that is the case.

The CHAIRMAN. It is the gentleman's intention that this act be interpreted as meaning acts relating to conduct in the inspection, weighing or other procedures regarding grain inspection or weighing activities?

Mr. BERGLAND. That is right.

Does counsel have a statement?

Mr. BOR. For the purpose of clarity, perhaps Mr. Bedell would like to add after this act the words "or other Federal law involving the handling or official inspection of grain."

The CHAIRMAN. If there is no objection the amendment will be reformed in accordance with the committee counsel's suggestion.

Mr. McHUGH. Is it appropriate at this time to offer an amendment to the amendment?

The CHAIRMAN. No; I am sorry. We must first dispose of this before any additional amendments are in order. However, the gentleman may offer a substitute.

Mr. BOWEN. Is there further time?

The CHAIRMAN. Time is not reposing anywhere at present.

Mr. BOWEN. I have a question.

Mr. Bedell, does your amendment imply that if a State agency discovers an imperfection and prosecutes this person that that would simply disqualify that State agency from being certified if it happens within a three-year period? One of the employees would have been found guilty.

Mr. BEDELL. No, sir, because this is prior to the enactment of the act.

Mr. BOWEN. "At this point" means there is no evidence now. Is that right?

Mr. BEDELL. Yes. If there is a desire to amend the amendment, I am willing to accept the amendment.

The CHAIRMAN. The author does not ask for unanimous consent. This is in itself an amendment to an amendment. Yours, consequently, would be an amendment in the third degree.

We can have any number of amendments offered to the main amendment after this one is accepted or rejected.

Mr. McHUGH. My purpose would be either to amend or substitute. I gather a substitute would be in order.

This would in effect eliminate subsection (1).

If I couch that in terms of a substitute to the amendment would that then be in order?

The CHAIRMAN. The gentleman wishes to offer a substitute to the amendment.

Mr. MURRAY. The proper form is to offer it as a substitute amendment. It is not a substitute for the whole bill.

It would be a substitute amendment which presumably would pick up the text that you agree with in the Foley amendment and then modify the Bedell amendment in the manner you desire.

That is in order.

Mr. McHUGH. I would like to offer a substitute to the amendment offered by Mr. Bedell which in effect would eliminate subsection (1) so that the substitute to the amendment would read "except that the Secretary may not delegate such authority to any State agency which has been found guilty," and so on, picking up the remainder of the language in the former subsection (2).

I believe that the gentleman from Texas and others have a valid point with regard to those States which have no State agencies at present but which, under the amendment, if adopted, would authorize the Secretary to delegate his inspection to State agencies. If those State agencies such as in Texas, Michigan, and elsewhere could demonstrate to the Secretary that they had the capacity and competence to conduct inspection, it seems to me they should not be precluded.

Of course, I think the former subsection (2) which I included in my substitute is certainly a valid concern and should therefore be reserved.

I yield to Mr. Krebs.

Mr. KREBS. What is there in subsection (2) that is magic about the three-year period?

There is nothing in there to assure anybody that at the end of 3 years, such agency is going to be any more competent or honest or any less guilty of any possible shenanigans than it was at the time of the alleged violations.

Mr. McHUGH. In that case, the Secretary would not have to delegate such authority to the agency. It simply would preclude him from delegating to the agency for the 3-year period.

I don't think there is anything magic about 3 years, but I think it is a reasonable period of time.

The CHAIRMAN. Though I have no desire to cut off the debate or discussion, I hope that we will reach somewhat of a conclusion.

The first vote occurs on the Bedell amendment to the amendment.

Mr. FITHIAN. Mr. Chairman, is this the McHugh substitute?

The CHAIRMAN. No, Mr. Fithian.

The procedure is this. We have an amendment to the amendment to the amendment, a substitute to the amendment, and then an amendment to the substitute is now in order in that case, if anybody wants to offer it.

The procedure would be to first perfect the main amendment itself then the substitute, and finally to vote on the substitute before voting on the main amendment.

Mr. WEAVER. Parliamentary?

The CHAIRMAN. State it.

Mr. WEAVER. After the votes, that is the motions by Mr. Bedell and Mr. McHugh, are further amendments in order to the Foley amendment?

The CHAIRMAN. At the conclusion of the vote on the Bedell amendments, other amendments will be in order to the so-called Foley amendment.

We will proceed to discuss and vote upon the amendments to the Foley amendment before voting on Mr. McHugh's and any amendments thereto.

Is that clear?

Will counsel state whether that is the correct procedure?

Mr. MURRAY. They can be handled sequentially. That is, each one in order after each one has been approved or rejected.

The CHAIRMAN. The procedure is, first of all, to sequentially perfect the so-called Foley amendment or any series of amendments offered thereto.

Then we will consider any amendments to the so-called McHugh substitute.

When there are no further amendments to the so-called Foley amendment or the so-called McHugh substitute, the vote will occur on the McHugh substitute and then the Foley amendment.

Mr. POAGE. The McHugh substitute is a substitute for the Bedell amendment.

The CHAIRMAN. No, there cannot be a substitute to the Bedell amendment. It has to be a substitute for the Foley amendment with any additional language touching on the Bedell amendment.

You cannot have more than one amendment to the main amendment. If it is going to be a substitute, it must be a substitute for Foley rather than Bedell.

The vote now occurs on the Bedell amendment to the main amendment of the Chair.

Will all those in favor of the Bedell amendment signify by saying aye.

Opposed, no.

The no's appear to have it.

The no's have it, and the amendment is not agreed to.

Are there other amendments?

Mr. Weaver, have you an amendment?

Mr. WEAVER. I have several amendments but before I offer them will the chairman yield for a question?

The CHAIRMAN. The gentleman has the time. Please proceed.

Mr. WEAVER. Thank you, Mr. Chairman.

What oversight function, authority, and responsibility would the Secretary have over the State agency under terms of the Foley amendment?

The CHAIRMAN. Under the proposed amendment which I have offered, the Secretary would have authority to delegate inspection authority at export ports to State agencies whose operation would be subject to such rules, regulations, and instructions as he may prescribe.

Additionally, the Secretary would have authority to withdraw that delegation at any time after giving notice.

The Secretary has broad authority.

Mr. WEAVER. But, Mr. Chairman, what particular and specific oversight authority would he have?

Could the Secretary—

The CHAIRMAN. He could instruct the State agency to do or not do something.

Mr. WEAVER. How does he know that the State agency is doing it or not? Could he have supervisors at all times permanently stationed there to see that his will and regulations are being carried out?

The CHAIRMAN. He can implement it by imposing any conditions he wishes.

Mr. WEAVER. He could have permanent Federal supervisors there with constant oversight?

The CHAIRMAN. Yes, if he chose to do it in that manner.

Mr. WEAVER. I would like to ask a broad question: How would—this is, bearing in mind that the State agency would be paying its own employees and they would come under various pension programs, et cetera, by the State—in terms of its actual workings, how would this really differ from a Federal inspection system?

I'm talking about the responsibility of the Secretary.

The CHAIRMAN. If you will recall, the intent of the amendment I am offering is to provide for Federal inspection at export ports which would be carried out directly by USDA personnel or by employees of a delegated State agency, if the Secretary so decides.

Irrespective of who performs the actual service, it would remain Federal inspection under the complete control, supervision, regulation, and instruction of the Secretary of Agriculture.

Mr. WEAVER. In other words, the Secretary could not fire an individual—

The CHAIRMAN. No, he could not. The Secretary, however, could withdraw the State agency's delegated authority if it continued to employ individuals who were not providing proper inspection services.

The Secretary's ultimate weapon is his refusal to delegate inspection authority.

If the State is not interested in retaining that delegated authority it can simply cease to abide by his regulations and instructions. At that point, the Secretary would exercise discretionary authority by withdrawing the inspection delegation.

Mr. WEAVER. Mr. Chairman, let me say this.

Why could we not use, instead of the words "State agency," the words "State department of agriculture?"

The CHAIRMAN. I think we should give the States some flexibility as to what they call their own agencies. Some States have commissioners of agriculture while others have directors of agriculture or secretaries of agriculture. Then, too, the State might want to set up an inspection agency that was under the director of commerce.

I don't think we ought to force the State to place its inspection agency within any particular State department.

Parallels to the concept of delegated authority exist elsewhere. A certain law may provide, for example, that the Secretary of Agriculture do something. It doesn't say that the President is supposed to do something, yet the President can obviously remove the Secretary of Agriculture if he does not accord with his desires.

Perhaps the President cannot substitute himself for the Secretary, but he certainly can change Secretaries.

The amendment which I have offered gives the Secretary of Agriculture the authority to substitute inspection agencies very quickly.

If he does not feel the States are carrying out the provisions of the Grain Standards Act or the related rules and regulations.

Does the gentleman have an amendment?

Mr. WEAVER. I offer this amendment.

After the word "instructions" on the fourth line from the bottom, I would offer this. This is an amendment to the Foley amendment.

After oversight and after the word "describe," add "and any such official inspection shall continue to be the direct responsibility of the Secretary."

Mr. BERGLAND. Will the gentleman repeat that last amendment?

Mr. WEAVER. After the words "instructions" and "oversight" and after the word "proscribe," add "and any such official inspection shall continue to be the direct responsibility of the Secretary," so that the sentence would read: "The Secretary may in his discretion delegate authority to the State agency to perform all or specified functions involved in the official inspection of the field inspection at export port locations subject to such rules, regulations, and instructions and oversight as he may prescribe and any such official inspection shall continue to be the direct responsibility of the Secretary."

The CHAIRMAN. Will the gentleman drop the word "and" before "instructions."

Mr. WEAVER. I thank the chairman. I would say yes.

Just briefly on this amendment, the chairman has implied, for my purposes anyway, that this is what he intends in this amendment.

I just wanted to spell it out precisely in the amendment.

I yield back any time that I might have, Mr. Chairman.

The CHAIRMAN. Mr. Sebelius?

Mr. SEBELIUS. No comment on the amendment, but it sounds like the gentleman from Oregon has put his finger on something that might improve the amendment.

I would like to make a little statement here.

All the members know that I did circulate a letter about the kind of State grain inspection department we have in Kansas some 2, 3, or 4 days ago.

I feel very strongly that we shouldn't take any steps to endanger a very good working organization—in fact one that is respected in the trade.

In Kansas we weigh the grain, inspect the grain, check the moisture, and check it for protein. We put a certificate on the car when it leaves the State. That car then can go into Canada. It can go into Mexico for purposes of blending the winter wheat with other wheats to make flour in various places.

I am very definitely worried about a barge going down the Mississippi River from a Kansas elevator and going on to Jamaica or a railway car going from either a 50 million bushel elevator in Salina, Kans., or a 25,000 bushel elevator in Almena, Kans., and going to Canada with this certificate and this inspection on it.

We now see what the Department of Labor is trying to do to custom combiners in an act we passed some time back. We know what OSHA tried to do to "mom and pop" stores. I'm not sure what the USDA might want to do in making an inland shipping point a port, so to speak. They might say that if I'm going to be able to ship a barge-load of grain coming out of Kansas City, Kans., or a car-load of grain coming out of Salina, Kans., and going to Canada or Mexico then they might want to include all of my elevators as export facilities.

I am touchy about this thing.

I know that Mr. Foley feels strongly about what they have in the State of Washington. They have a good system.

Mr. Wampler feels strongly about the State system in the State of Virginia.

Who am I to say because I am proud of mine that theirs isn't just as good and should be part of an overall package if we're now going to say we're going to have uniform regulations—why the Foley amendment shouldn't be adopted.

I think that it is good law and it will work someday.

I cannot see why suddenly we have to hold the GAO in such great stead and follow them because they have recommended entire federalization.

All they have to do is look at the Post Office Department or something else to see that federalization is not always the magic answer.

We have working, viable State grain departments that can do the work and still respond to the problem and follow an overall set of guidelines and put the kind of teeth that Mr. Foley wants to put in it with his amendment.

The Secretary of Agriculture could decide whether or not to let the State of Washington still use its State system to export their great white wheat to foreign countries.

I can't help but think we are overreacting to something if we want to Federalize the entire thing.

I'll go as far as Mr. Foley has. I am definitely worried. Other people can say—well, interstate commerce and all that can't be interpreted that far. You hear what's going to happen to your custom combiners this year if something doesn't take place with the proposed regula-

tions. You'll have it where they can't stay in their mobile homes but perhaps have to go to a motel to comply with migratory workers regulations.

I can't see why the State of Washington, the State of Virginia, or any other State that has a good viable system should be denied the opportunity to prove to the Secretary of Agriculture that they can do the job.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. VIGORITO. Could we have a comment on this amendment from counsel?

Mr. BOR. Mr. Vigorito, what question would you like me to respond to?

I think Mr. Weaver has very aptly described the amendment.

As he indicated, it is to clarify the intent of the amendment.

What he stated was that it was not designed to change the original intent of the sponsor of the amendment, namely that the intent of Mr. Foley was.

Mr. VIGORITO. I thank you.

The CHAIRMAN. Mr. Krebs?

Mr. KREBS. Very briefly I would like to speak in support of Mr. Weaver's amendment.

I think it would help to prevent any tendency on the part of any Secretary of State, regardless of who he is, to pass the buck on his obligation as set forth in the amendment.

The CHAIRMAN. If there is no further discussion, vote now occurs on the amendment of the gentleman from Oregon, Mr. Weaver, to the principal amendment.

All in favor of the Weaver amendment to the amendment signify by saying aye.

Those opposed will respond no.

The ayes appear to have it, and the amendment is agreed to.

Are there other amendments?

Do you wish to say something. Mr. Fithian?

Mr. FITHIAN. Thank you, Mr. Chairman.

Before we vote on the amendment which is before us, let me summarize what we have been trying to do here for the last 3 months. I would like to make these observations.

First, there is a substantial tendency, as I think can now be documented by anybody who has sat on this committee for 1 year, of the USDA not to get itself involved. Therefore, I think the tendency not to step in and punish a State which has violators will be very great.

Is it not a sad commentary indeed that one of our chief trading partners, the Japanese, have had to resort to an automatic appeal system on every shipment that they buy?

We need the clearest possible message for foreign buyers.

The Foley amendment will not give that message.

If we come out of this committee with a very weak response to a very serious problem, and if the Senate comes out with it what now appears they will come out with, which is an implementation system far greater in terms of federalization, then what we have been discussing in here—that system with its implementation of the GAO recommendations which is now supported by Senators Humphrey, Talmadge, Clark, and

McGovern, as I understand it—there is a very good likelihood that the Senate will come out with a version of all Federal inspections.

We cannot predict that. But let us conjecture.

If the Senate comes out with that, and if we come out with no Federal inspection even at export terminals, will it not then result that the conference committee will write the legislation.

Those of us who are on this committee and who are directly affected in the Corn Belt will have no voice in the final legislation other than to vote it up or down.

Much has been said about cost in this committee.

The cost is no different between the Foley amendment and the committee print.

If State inspectors—to answer the argument of the vice chairman—are no longer going to be used at export terminals where they are now employed, then these people will not etherealize or vanish from the earth. They will be available to be hired by the U.S. Department of Agriculture as inspectors.

The implementation of the committee print is basically no more difficult than the implementation of the Foley amendment.

Finally, let us look at what has happened since this committee voted 22 to 10 in favor of Federal inspection.

What has happened now to shift the thinking of the committee?

We had a GAO recommendation saying essentially that we were not going nearly far enough and that the indictments, frauds, and scandals were such that we should federalize the entire system.

We have had the Senate take up that action. We have had additional indictments.

We have now before us in the recent Washington Post issue even the president of Bunge calling for a Federal inspection system.

I will not take the time of this committee to read the statement, but I would ask unanimous consent that it be inserted as a part of my remarks.

The CHAIRMAN. Without objection, so ordered.

[The statement referred to is held in the committee file.]

Mr. FITHIAN. All of this: the vote of the committee, an appeal of the GAO to go further, action in the Senate which goes further, action by one of the companies involved which is calling for Federal inspection at the export terminals in weighing as well as grading—all of these things that have transpired would seem to me as a novice at this game that we ought to have a stronger vote in favor of Federal inspectors instead of a weaker one.

I recall, as an historian, many of the arguments made against Federal meat inspectors. Some of the members of this committee engaged in those debates.

I would submit for your consideration that almost every argument that we heard in this committee since October was also heard over the meat inspection bill.

There were all sorts of dire consequences which were predicted. Today we have a Federal meat inspection system which does work.

It would appear to me that reformers and those who would change the system always must bear the burden of proof. If we need any proof that we need a substantial change, a change which will give some assurance to foreign buyers, then it would seem to me that the fraud and the scandal and the reaction of the foreign buyers, the GAO and the

action of our distinguished colleagues in the Senate, ought to provide this committee with the adequate evidence we need.

Those of us who have farmers in their districts and those of us who care about foreign sales and the balance of the trade which goes with it will vote no on this amendment because I see no other way of giving the kind of signal that we really have done anything.

I will close by saying this. If farmers cannot find remedy in this committee, then where in the United States will they find a remedy?

The CHAIRMAN. The time of the gentleman has expired.

Mr. Baldus?

Mr. BALDUS. I am anxious for the vote to occur and I will take just a minute.

I think it is important that although the full text of the Klein statement was put in the record, I think parts of it ought to be extracted for consideration now.

Let me quote.

"For three basic reasons I favor having the Federal Government—more specifically, the U.S. Department of Agriculture—take over the functions at port elevators that are presently handled by private and State inspection agencies."

This is the President of Bunge Corp.

"I doubt that a self-policing system, even coupled with closer supervision by private and State inspection agencies, can of itself restore the essential ingredients of public confidence."

Further, "all export grain at port elevators should be sampled and graded by USDA personnel; that is, there should be primary Federal inspection. At present such primary Federal inspection of grain is neither required or available."

Those are some of the reasons and I yield back the balance of my time.

Mr. FITHIAN. One additional point needs to be made, Mr. Chairman.

I believe four or five members of this committee took the responsibility of going down and looking first-hand at the problems we were having.

I was very much impressed and I have been very much impressed with that report back to us on an individual basis as to what the remedy is.

In addition to all that everyone else has done, the Bunge president, the GAO, the Senate, and others, we have members of our own committee who have looked at this thing first-hand and who are also recommending Federal inspectors at the export terminals.

The CHAIRMAN. Mr. Thone?

Mr. THONE. Mr. Chairman, like Mr. Baldus, I too hope we could vote on this. I will try to be brief. I think everything has been said, perhaps more than once.

I am sorry that our good friend from Zephyr Hills, Fla., left because I did have some comments to address to him.

As you remember he argues that we should get strong enforcement here. He says that he wants to let the prosecuting attorneys cleanup the mess.

I agree with him. This would be ideal.

But let me read what Mr. Gallinghouse, the district attorney in New Orleans, testified on the Senate side on December 25, last year.

I quote directly.

He had a colloquy, with Mr. Sebelius, and with the distinguished Senator from Kansas, Mr. Dole.

Please understand that you suggested that I seem to be talking about a federalized system. I want to make it clear, and I think you should know this so you could evaluate my observation, I am not one who believes that the arm of the Federal Government is long enough or strong enough to reach out into every part of the country and solve all of the problems.

I am not suggesting that people in Federal Government have a monopoly on integrity. Basically, my philosophy is this: If you can do something through private enterprise, local, or State governments, then we should try to do it and not extend the authority of the Federal Government.

I can tell you this, speaking as a man who has some pretty conservative philosophical viewpoints—and I have studied government thoroughly and carefully and have been a State official—I can tell you that if I have ever seen anything that requires a national strategy, a national system, a national direction, and a national responsibility, it is in this very sensitive grain handling area.

That was the conclusion of the district attorney in New Orleans regarding the situation at the gulf ports. I see Mr. Kelly has returned.

Mr. Kelly, you asked about the remedy the Michigan fellow has in shipping grain to Florida, or vice versa.

They have a lot of remedies in the domestic market. In the first place, they are not going to long tolerate any purchases with dishonest grading. They will get new suppliers.

They always have the right, Mr. Kelly, of the Federal appeal, and the grain shipped from the interior is, of course, subject to examination at destination.

None of these checks and balances or remedies are practically available in the international grain market.

This committee in its wisdom, not too long ago, decided as a matter of national public policy that we should transfer, Mr. Kelly, from State jurisdictions and from State prosecution, the barbarous cat and dog-fighting enterprise.

As I remember, I made a motion to delete that section, thinking that this was probably law enforcement that should be left to the province of State jurisdiction.

The Department, as you remember, suggested that maybe we were talking about a cost figure of \$25 million per year.

I think that the chairman rightly discredited that arithmetic on the floor, and we put in a \$400,000 maximum in that regard, for the first year, I quickly add.

The key point is this. When we had a vote in the committee as to whether or not that was the proper subject matter for such public policy declaration for the United States and its Federal prosecuting agency, I think my fellow libertarian from Idaho and myself stood alone when we had a rollcall vote.

Now let me talk a little about the gulf ports and the national interest involved—an urgent national public policy question.

I think, Mr. Hightower—and I respect your judgment very much—you referred to this as a generally localized problem.

I think everyone can see that the basic problem is in gulf port area.

But, maybe I should be a little provincial representing Nebraska. All of our grain exports are captive of the gulf ports. We have nowhere else to go.

As a matter of fact, those gulf ports shipped out 62.5 percent of all grain, 6,627 million dollars' worth of grain and products, from January to November of 1975.

When you come to the bottom line, as far as I'm concerned, I do not think we should allow administrative discretion. I would urge that we not go the Foley route because of what we have alluded to here before—the political pressure that would be exerted on the Secretary of Agriculture at the appropriate time to put State agencies into business which State agencies should not be in the inspection business.

Mr. Foley, you yourself suggested that maybe if you can't get to the Secretary of Agriculture, and if the heat is strong enough, the President then asks the Secretary of Agriculture, and if he doesn't acquiesce, then shortly there's a new Secretary.

Mr. SEBELIUS. Will the gentleman yield?

Mr. THONE. I will yield; yes.

Mr. SEBELIUS. Are we not going to get Federal inspection when we delegate authority to those States like Washington and Virginia?

Mr. THONE. Our very able chairman, who has a gift with words and is very persuasive indeed, talks about this Federal-State hybrid.

As far as I'm concerned, Mr. Sebelius, if we end up back in the gulf ports—and I am sure that my friend Mr. Moore will cringe a bit on this—with the State of Louisiana in this business, then I do not think we have had real reform in a vital area that is crying out for reform.

Mr. MOORE. Will the gentleman yield at that point?

Mr. Chairman, the time of the gentleman has expired.

Mr. THONE. In no way should we have a mere Band-Aid or home remedy here when the circumstances demand major surgery.

As far as I'm concerned, that major surgery would be to federalize all export weighing, handling, grading and sampling of grain.

The CHAIRMAN. I wonder if we could agree to limit members to 2 minutes of comment. In that way we could vote on the McHugh substitute before voting on the main motion at 12 o'clock.

Is there any objection to that?

Before recognizing the gentleman from Louisiana, Mr. Moore, may I suggest that no one is obliged to use his full time.

Mr. MOORE. There has been no State inspection of export grain in Louisiana in years. There has been none whatsoever. So it is not fair to say that Louisiana cannot inspect the grain. They haven't had the opportunity.

The CHAIRMAN. It is my feeling that the amendment I have offered amplified by Mr. Weaver's addition makes it abundantly clear that what is intended here is a single standard for export inspection under the authority and constant oversight of the Secretary of Agriculture and subject to common guidelines, conditions, and instructions which he prescribes.

I further contend that this amendment as amended by Mr. Weaver clearly indicates that we are talking about nothing less than Federal inspection at export points since the only alternative to inspection by direct USDA employees would be by State employees under the direct responsibility and supervision of the Secretary of Agriculture.

Reluctantly, I have concern with the McHugh substitute for this reason.

Though I understand the intent of Mr. McHugh's substitute, I must reluctantly express some concern.

I think it would be unfortunate for us to give the States anything other than an incentive to expose any wrongdoing on the part of their employees.

If the State agencies cooperated with Federal prosecutors in exposing a crime committed by one of their own employees, the substitute section 2 would be trigger.

Mr. BEDELL. I think that is incorrect, Mr. Chairman. I think his substitute applies only upon the enactment of the law.

The CHAIRMAN. After enactment we should have a vigorous effort on the part of the States and the Federal prosecuting authority to expose any criminal conduct.

Mr. BEDELL. And such exposure would not in any way jeopardize that State agency under his amendment.

The CHAIRMAN. Is that correct Mr. McHugh?

Mr. McHUGH. Yes.

The CHAIRMAN. I thought you retained section 2.

Mr. McHUGH. I did.

The CHAIRMAN. It reads in part:

Which has been found guilty or had employees found guilty of violating the provisions of this Act in the 3-year period immediately prior to the date of enactment.

I am sorry. I withdraw my comments.

Are there any other 2-minute comments?

If not, the question occurs on the McHugh substitute to the Foley amendment as amended.

Mr. FITHIAN. A parliamentary inquiry?

The CHAIRMAN. Yes.

Mr. FITHIAN. If the McHugh substitute carries, is there then no vote on the Foley amendment?

The CHAIRMAN. There is a technical vote.

Am I correct on that, counselor?

Mr. MURRAY. If the McHugh substitute amendment prevails, then the vote will reoccur on the Foley amendment as amended by the McHugh substitute amendment.

The CHAIRMAN. In other words, voting twice on the same matter.

Mr. MOORE. A point of order. Would the McHugh substitute be re-stated at this time?

The CHAIRMAN. Yes.

The McHugh substitute incorporates the provisions of the so-called Foley amendment and adds thereto the language of section 2 of the bill.

Mr. BOR. Will the McHugh substitute also include the Weaver amendment to the Foley amendment?

The CHAIRMAN. The Weaver amendment was added, as I understand it, to the main motion.

Mr. McHUGH. That is my intent, Mr. Chairman.

The CHAIRMAN. Mr. Weaver, do you want to offer an amendment to the McHugh substitute to include your language?

Mr. WEAVER. I so offer.

The CHAIRMAN. Mr. Weaver offers it without objection. The Weaver amendment will be attached to the McHugh substitute as well as to the main motion.

Mr. BEDELL. It would be perfectly proper to vote for the McHugh amendment if you feel it would improve the Foley amendment and still to vote against the final passage if you are opposed to the Foley amendment. Is that correct?

The CHAIRMAN. That is technically possible, yes.

Mr. BEDELL. But if you feel that the——

The CHAIRMAN. The gentleman's vote would not be questioned if he did that although in some circles it might be considered somewhat devious.

No, that is perfectly proper.

Mr. THORNTON. Mr. Chairman, I am reluctant to take a portion of my 2 minutes.

I am in support of the Foley amendment. I must, however, oppose the McHugh substitute because I think the standard and the measurement of time is arbitrary and would lead to a great deal of confusion.

For one thing, I first read it as though the prohibition were against a State which had an employee who had committed acts within the 3-year period prior to the passage of this act which might later result in a determination of guilt which would disqualify.

I am now told that it is the determination of guilt during the 3-year period which would disqualify.

This means that a State which had employees who had committed acts but yet at this point there is no determination of guilt, then they would remain eligible for certification.

It seems to me that you are getting into an area here of trying to decide the kind of regulations the Secretary should exercise in his discretion in determining whether to delegate to a particular State these functions.

Therefore, I must oppose the McHugh substitute.

The CHAIRMAN. Mr. Moore, do you want to be recognized?

Mr. MOORE. I want to point out a technical situation here.

He says, "or had employees" at one point in the McHugh substitute and then the last line says "or employee" in the singular. Are we talking about more than one employee or in the singular?

It ought to be made the same, one way or another, to remedy the technical situation.

The CHAIRMAN. Without objection the previous question is ordered on the McHugh substitution to the Foley amendment and all amendments to the McHugh substitute or the Foley amendment.

Without objection the previous question is ordered.

All in favor of the McHugh substitute signify by saying aye.

All opposed no.

The no's appear to have it.

The no's have it, and the McHugh substitute is not agreed to.

The question now occurs on the Foley amendment as amended.

Mr. THONE. I ask for a rollcall vote.

The CHAIRMAN. A rollcall vote is requested.

All those members who wish to support the Foley amendment when their names are called respond "aye," and those opposed respond "no."

The clerk will call the roll.

[The rollcall follows:]

Ayes: Representatives Poage (by proxy), de la Garza (by proxy), Vigorito, Jones of North Carolina (by proxy), Jones of Tennessee (by proxy), Bowen, Rose (by proxy), Weaver, Hightower, English, Thornton, Wampler, Sebelius, Symms (by proxy), Johnson (by proxy), Madigan (by proxy), Heckler (by proxy), Jeffords, Kelly, Grassley, Moore, Foley.

Nays: Representatives Melcher, Mathis (by proxy), Bergland, Brown (by proxy), Litton (by proxy), Breckinridge (by proxy), Richmond (by proxy), Nolan (by proxy), Baldus, Krebs, Harkin, Bedell, McHugh, Fithian, Jenrette, D'Amours (by proxy), Findley (by proxy), Thone, Hagedorn.

The CHAIRMAN. The clerk will report the results of the rollcall.

The CLERK. Twenty-two ayes and nineteen nays.

The CHAIRMAN. There being 22 ayes and 19 nays, the amendment is agreed to.

The committee will stand adjourned to meet at 10 a.m. tomorrow.

[Whereupon at 12 m., the committee adjourned.]

The first part of the paper is devoted to a general discussion of the problem. It is shown that the problem is of great importance in the theory of the differential equations of the second order. The second part of the paper is devoted to the study of the properties of the solutions of the differential equations of the second order. It is shown that the solutions of the differential equations of the second order are of great importance in the theory of the differential equations of the second order. The third part of the paper is devoted to the study of the properties of the solutions of the differential equations of the second order. It is shown that the solutions of the differential equations of the second order are of great importance in the theory of the differential equations of the second order.

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U.S. GRAIN STANDARDS ACT OF 1976

WEDNESDAY, MARCH 3, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Foley, Poage, de la Garza, Vigorito, Jones of North Carolina, Melcher, Mathis, Bergland, Bowen, Litton, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, Jenrette, D'Amours, Thornton, Wampler, Sebelius, Findley, Thone, Peyser, Heckler, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; John M. Lindley, Glenda Temple and Susan Bell, staff assistants; L. T. Easley, press assistant; Weldon Barton, staff consultant, Subcommittee on Domestic Marketing and Consumer Relations; Alan Gray, staff consultant, Subcommittee on Livestock and Grains.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee resumes consideration of pending business. This is the Fithian amendment on weighing.

When we adjourned last week we were in the process of discussing Mr. Krebs' amendment, which would provide for direct weighing procedures.

Does anyone wish to have that amendment restated? If not, I recognize Mr. Krebs.

Mr. KREBS. Mr. Chairman, in light of yesterday's vote in which I think the committee expressed itself along certain lines, I will withdraw my amendment.

The CHAIRMAN. The gentleman from California asked me for permission to withdraw his amendment. The chair accedes to this request. Without objection Mr. Krebs' amendment is withdrawn.

Mr. BERGLAND. Is that the gentleman's amendment to the Fithian amendment?

Mr. KREBS. Yes.

Mr. HARKIN. Does a withdrawal of the Krebs amendment to the Fithian amendment leave intact the Fithian amendment without the mandate that requires the Federal Government to do all the weighing at the export terminals?

The CHAIRMAN. The Fithian amendment, which is presently before the committee, states that the Secretary shall cause the supervision

of weighing of all grain received at or shipped from export port locations to be performed by authorized employees of the Department of Agriculture.

Mr. Krebs' amendment would have dropped the term 'supervision of.'

Mr. HARKIN. I reserve the right to object, Mr. Chairman.

I understand Mr. Krebs' reason for withdrawing his amendment in light of yesterday's vote, but I do not know that they are necessarily connected.

Because of yesterday's vote where we voted not to have a total Federal system at all of our export points, does this make moot the Krebs amendment to the Fithian amendment anyway?

In other words, I would object and will object to the removal of the Krebs amendment only if it is not made moot by the vote yesterday.

If it has been made moot, then I will withdraw my objection.

The CHAIRMAN. I don't think it is made moot by the vote yesterday.

The question really before the committee now is just how the committee wants to treat weighing.

The proposal of Mr. Fithian is that there be supervision of weighing at all export locations by USDA personnel.

Mr. Krebs was proposing to amend that by requiring that the weighing process itself be performed by USDA personnel.

I intend to offer an amendment at the appropriate time today, authorizing the Secretary to supervise weighing either with USDA personnel, as suggested in this amendment, or, in accordance with the vote yesterday, with employees of the State systems under a delegation of authority.

As you know, a committee can choose any approach it wishes. It can authorize the Secretary to conduct grain inspection through the direct use of employees of the USDA or State agencies while requiring that only USDA personnel perform the weighing.

Although this may be an inconsistent policy, it is completely permissible from the parliamentary standpoint.

Mr. HARKIN. However, because of yesterday's vote, if we have at the export points a State agency which is doing the inspection, then to have Federal personnel doing the weighing—again, will you not have a duplication of personnel which you will have anyway with the supervision?

That is why I do not want to support that concept. We have this duplication all of the time.

That is also why I am concerned about the Krebs amendment. If it means another duplication of inspection services, that is, in the weighing area, then I am not going to object to the withdrawal of that amendment.

Will the State be doing the weighing or will they contract with the private agencies to do the weighing at export points?

If that is possible in the bill now, then I will object to the removal of the amendment.

The CHAIRMAN. We haven't really made any decision on weighing yet. We are treating this issue as being entirely separate from inspection services.

If weighing is to be brought under the supervision of the USDA at export locations, this decision must be agreed to by the committee.

As of the moment, we have only progressed as far as requiring that all inspection services at export points be provided by the Secretary of Agriculture through the use of authorized employees of the U.S. Department of Agriculture or, under certain stringent conditions, through employees of State agencies who remain under his supervision and control.

The problem of weighing has not yet been resolved in the committee print.

The Chair recognizes Mr. Poage.

MR. POAGE. It seems to me that we are not going to pass any legislation. As far as I'm concerned, that's fine. But it's not fine from the standpoint of the procedure of the committee.

If this committee is going to be of any value to the Congress, then it has to act and consider legislation.

It is of no value in the world to the Congress or to the public or to you as a candidate for office just to sit here and debate it endlessly around and around as if you had never heard of the subject before.

We have got to make some decisions on this thing.

I had hoped that we had made one yesterday with Mr. Foley's amendment.

I voted for it.

If you are going to have an inspection system, which I do not believe in, then this is the best way of doing it. I believe that we might as well face the facts that we are going to have it, and I'm going to try to get the best one we can.

Why cannot we make some decisions as to what we want, Mr. Chairman, because we have been at this thing for 3 months. We are right back where we were at the beginning.

You will never make it by having everybody offer 42 different amendments and have each amendment subject to a substitute and an amendment to the substitute.

If we can decide on some basics as to what we want, then we should be able to write a bill.

I don't think we're ever going to write a bill by just writing it out and offering an amendment here to change a comma or semicolon and so on.

That will not get us anywhere.

Can we not decide whether the committee as a whole wants to include weighing or not?

Having decided it, then can we not write it out? If we don't want to include weighing, then let's quit talking about it.

There is no law requiring each member here to offer an amendment and then for everybody else to offer a substitute for every amendment that is offered.

Yet that is the way we are proceeding.

We are not making any process. I would rather see the whole thing die, but it is not going to die. It is on your back. You have to face up to it. We might as well pass something.

THE CHAIRMAN. Will Mr. Harkin yield to Mr. Bergland?

MR. HARKIN. I will yield to the gentleman from Minnesota.

MR. BERGLAND. Thank you very much for yielding.

Mr. Chairman, while I personally disagree with the decision made yesterday, it was made nonetheless.

It seems to me the weighing provisions ought to conform to provisions on sampling and grading. These two functions are parallel in nature. We ought to have the same system for both.

My question is this: Is the amendment which the gentleman from Washington intends to offer an amendment to the Fithian proposal so it conforms to what was done yesterday?

The CHAIRMAN. Yes.

I intend to offer two amendments which were circulated yesterday. I don't know if every member has had a chance to see them.

The first simply conforms the weighing provisions for export points, as proposed by Mr. Fithian, with those provisions concerning inspection authority. Thus, if the Secretary were to decide to allow export inspection to be handled by the State of Oregon, for example, then weighing supervision would also be handled by the State of Oregon.

The second amendment deals with the weighing problem at inland points and proposes a different alternative there.

I think that the gentleman from Texas has an excellent suggestion. Perhaps we should proceed conceptually in order to determine generally just what the committee wants before settling on specific language reflecting this decision.

I am afraid that if we don't really know where we're going, we may end up with a lot of unnecessary votes and amendments.

The weighing problem is a significant one. What does concern me greatly is the possibility that we might establish elaborate procedures for weighing supervision encompassing the inland points and perhaps the thousands of country elevators, thereby placing a heavy burden of responsibility on the USDA without sufficient opportunity to thoroughly explore what we are doing.

What I propose is that we require the USDA to come back no later than 1 year after the enactment of the act with specific proposals regarding weighing supervision at inland points.

The committee at that time would undertake a comprehensive review of the entire weighing problem.

Mr. BERGLAND. Is the language he is proposing the same language found on page 12 of the committee print?

That in effect would accomplish what the chairman was suggesting.

Mr. THONE. He circularized an amendment, Mr. Bergland.

I will be very, very brief.

I take the same position that the gentleman from Iowa did yesterday and the gentleman from Minnesota, Mr. Bergland, did.

It was a rather close vote.

Yesterday afternoon and even last night I had folks come to me with this or that proposal on the substitute or whatever.

I agree with the gentleman from Texas, Mr. Poage.

We have been going on this thing now for a long, long time.

The committee has worked its will as far as I'm concerned. As far as I'm concerned in future meetings here, the chairman will have my full cooperation to get a bill reported.

If we do not do that, Mr. Harkin, we are just not going to end up with anything at all. The sooner we get on with our work now, the better.

I frankly am encouraged that we have a dynamic Under Secretary of Agriculture down there who, through his work on this committee

and through his work as general counsel, fully understands and is fully on top of this grain problem.

I hope now that we can give him some additional tools here with original inspection, much tougher penalties, and we can tighten up the conflict of interest section, adopt the two Foley amendments to the Fithian amendment on weighing, and get on with it.

I think we are going to get the best bill out of this committee that we can possibly get.

I think the sooner we do so, the better.

Mr. KREBS. Will the gentleman from Iowa yield?

Mr. HARKIN. Yes.

Mr. KREBS. Mr. Chairman, my request to withdraw my amendment was made in the spirit enunciated by both the gentleman from Nebraska and the gentleman from Texas.

I would like to know what the parliamentary status is at this time. Is there still an objection or not?

The CHAIRMAN. Mr. Harkin has a reservation.

Mr. KREBS. I too was on the losing side yesterday, but I think there comes a time when you face reality—whether you are on the winning or losing side—and you draw your conclusions from that.

On that basis, I ask for a withdrawal of my amendment.

The CHAIRMAN. The gentleman from California asks consent to withdraw his amendment.

Mr. HARKIN. Reserving the right to object, Mr. Chairman, I understand what my good friend, the gentleman from Nebraska, has just said and the gentleman from Minnesota has just said. But one begins to wonder just when the final decisions are made.

I thought the decision was made a month ago as to just who is going to do the inspection at the export points?

The motion was made and voted on and the next day a motion was made to reconsider. This was about a month ago. It was duly voted on in the committee. Then it came up again.

We have spent a month debating this thing back and forth.

I do not want to beat a dead horse any more than anyone else, but I do not know when final decisions are made. I do not know that a final determination or decision has been made on just who is going to do the inspecting at the export points and who is going to do the weighing.

If it is the will of the committee to move ahead in this area by getting the Federal Government totally out of it by leaving the system the way it is with all of the built-in faults, then so be it.

I just have serious reservations about the way that this committee is going right now in this grain inspection area. I have seen it happen in other areas where you have a bill where you get one very important amendment which is debated for weeks and perhaps even months. Then when finally a decision is made, then the rest of the bill, even though it is important, is rushed through in a couple of days.

I don't think that is healthy.

Mr. NOLAN. Will the gentleman yield?

Mr. HARKIN. Yes.

Mr. NOLAN. Would it satisfy the gentleman's concern if the Krebs amendment were changed to not simply provide for the elimination of the words "supervision thereof" but go on to insert in lieu thereof

language similar to the language used with regard to inspecting so that it would provide that weighing should be done either by Federal officials or State officials when so designated or authorized by the State department of agriculture?

It would seem to me that in that way the provisions for weighing would conform to the provisions that we now have established for inspecting.

Perhaps it would satisfy the gentleman's concern.

Would he care to comment?

Mr. Chairman, would such an amendment have such an effect?

The CHAIRMAN. If the Krebs amendment were adopted, it would amend the Fithian amendment. The Fithian amendment itself could be further amended to provide that the weighing procedure, which under the Krebs amendment would have to be performed directly by USDA employees, could be done by State employees under a delegated inspection authority from the Secretary.

The real question is do we want public bodies to undertake only the supervision of weighing or are the actual weighing and related activities to be carried out by public employees.

What the gentleman from Minnesota has suggested is a perfectly appropriate decision, if the committee wants to make it.

I think that our main decision is to what degree are public employees to be involved in weighing.

Mr. NOLAN. Mr. Chairman, I sense what the gentleman from Iowa is saying is that whatever way we do it, we want it to be consistent and efficient.

Perhaps I am wrong, but I think that is the point that the gentleman from Iowa is trying to make.

Now, am I incorrect?

Mr. HARKIN. You are correct.

Mr. NOLAN. You are trying to find an efficient and consistent method. I share your concern. It is legitimate. It is one that we cannot ignore.

The CHAIRMAN. Let me ask for a sense of the committee.

How many people would like the weighing itself rather than supervision to be conducted by public officials representing the State or Federal Government?

How many people want the entire weighing process to be conducted directly by either USDA or State employees?

Mr. BALDUS. Directly conducted and/or delegated?

Do you mean in conflict with yesterday's amendment or consistent with yesterday's amendment?

The CHAIRMAN. How many people think this decision ought to be consistent with yesterday's decision, whatever else we do?

That is the consensus then.

How many people feel that authority for supervision only should be vested in public bodies?

This is as contrasted to direct weighing.

The CLERK. Seven.

The CHAIRMAN. How many people feel that direct, actual weighing itself, as provided for under the Krebs amendment, should be conducted by public officials?

The CLERK. Five.

The CHAIRMAN. It is rather divided.

Can we ask the USDA to comment on its position with respect to these two possibilities?

Mr. KNEBEL. We would find and feel that the application of any statute would be more homogeneous if the weighing and grading were consistent.

I would also call to the attention of the committee that the Humphrey bill, which could conceivably become the action bill in the Senate, provides for a consolidated agency where you would have essentially a complete blending between the warehouse and the grain division.

So if you get to a point later where you do not have consistent functions here or consistent scales and standards, you could have some real problems in resolving a conference bill.

I am sure you have considered that.

Our feeling is that if you have consistency in both areas, it would be easier and better to administer if indeed we are to administer it.

The CHAIRMAN. How would the Department feel about language indicating that the USDA, with the possibility of contracting this authority to States, shall conduct weighing supervision which, at the discretion of the Secretary may include the actual weighing activities?

Mr. KNEBEL. Sir, with respect to the two amendments which you have proffered, it would go to your committee option No. 3. I see those as consistent with yesterday's vote and compatible from an administrative standpoint.

I am not at this time able to say that this situation is completely free of problems from our standpoint, but it is certainly a step in the right direction.

The CHAIRMAN. Would supervisory authority alone only create more problems if you cannot directly mandate the method of weighing?

If given supervisory authority would you also prefer to have authority to require that the weighing be done by USDA personnel and how it was to be done?

Mr. KNEBEL. I feel that we need to have the supervisory authority if we're going anywhere at all.

As to whether or not you get into the delegation or whether or not we get into some administrative nightmares, then we get into that if you have all Federal at export points and if you don't have it in the grading.

So I would urge compatibility.

Mr. HARKIN. Mr. Chairman, I withdraw my reservation.

Mr. THONE. Mr. Chairman, I move the previous question on the Fithian amendment. Isn't that the pending business?

The CHAIRMAN. Yes; but we have other amendments pending.

Mr. NOLAN. Reserving the right to object, I want to say that it seems to me that what we did just a minute ago is that we voted here to establish a procedure with regard to weighing. We would like one to be consistent with regard to inspection.

Then we went on to say that even though we want to be consistent, we are not going to be. Because on the second vote, we said that we are not going to have a Federal- or a State-designated official doing the weighing.

In fact, we might even be willing to delegate the responsibility for even the mere supervision of weighing to appropriate State agencies.

So I will not object to either, but it seems to me that perhaps the committee staff should be instructed to prepare language for us to consider that would in fact make the weighing provisions consistent with the provisions with regard to inspecting.

But I withdraw my objection.

The CHAIRMAN. At this point, the Chair is going to offer an amendment, which we can then discuss.

I offer the following amendment to the Fithian amendment:

If the Secretary determines that a State agency is qualified to perform supervision of weighing in accordance with the criteria of subsection (c) of this section, the Secretary may, in his discretion, delegate authority to the State agency to perform such supervision at export port locations subject to such rules, regulations and instructions as he may prescribe. Any such delegation may be revoked by the Secretary, at his discretion, at any time upon notice to the State Agency without opportunity for a hearing.

The purpose of this is to comport the supervision provided in Mr. Fithian's amendment to the provision for inspection authority.

If there is no objection, the previous question amending subsection (a) of the Fithian amendment is ordered.

Mr. MOORE. Mr. Chairman, I ask for a rollcall vote on this amendment.

The CHAIRMAN. Does the gentleman want an indication of any substantial objection before he requests a rollcall?

I have no wish to interfere with your right to a rollcall, but I also have no desire to do that unnecessarily.

Mr. THONE. Could I suggest a show of hands?

The CHAIRMAN. All in favor raise your right hands.

The CLERK. Sixteen.

The CHAIRMAN. Those opposed?

The CLERK. Four.

The CHAIRMAN. The vote is 16 to 4. Does the gentleman still want a rollcall vote?

Mr. MOORE. Yes.

The CHAIRMAN. The gentleman from Louisiana demands the ayes and nays.

All those who are in favor will respond by saying aye, and those who are opposed will respond nay.

[The rollcall follows:]

Ayes: Representatives Poage, de la Garza (by proxy), Jones of North Carolina, Mathis (by proxy), Bergland, Breckinridge (by proxy), Baldus, Hightower (by proxy), Bedell, English (by proxy), Fithian, Thornton, Wampler, Sebelius, Findley, Thone, Symms (by proxy), Johnson (by proxy), Madigan (by proxy), Kelly, Grassley, Hagedorn, Moore, Foley, Vigorito (by proxy), Jones of Tennessee (by proxy), Bowen (by proxy), Rose (by proxy), Litton (by proxy), Jenrette, Jeffords (by proxy), Heckler (by proxy).

Nays: Representatives Melcher (by proxy), Brown (by proxy), Richmond, Nolan, Krebs, Harkin, D'Amours, McHugh.

The CHAIRMAN. The clerk will report the result of the vote.

The CLERK. Thirty two ayes and eight nays.

The CHAIRMAN. There being 32 ayes and 8 nays, the amendment is agreed to.

I recognize the gentleman from Wisconsin, Mr. Baldus.

Mr. BALDUS. I have a concern that we have a clear expression from the committee that we do want to make the weighing conform to the inspection. Whatever applies to inspection also applies to weighing.

I am concerned, however, that we are not proceeding that way so I would like to ask counsel this.

My understanding is that yesterday we caused inspection to be the responsibility of the Federal Government at export ports.

Now we are causing not the weighing to be the responsibility, but the supervision of the weighing to be the responsibility.

If we are really going to be the same, then it seems to me we want to cause the weighing to be the responsibility of the Federal Government, the same as the grading, and allow the delegation of that responsibility to a State agency.

Is that correct?

Mr. BOR. The answer to that is—it depends on your own view of the matter.

One view of the matter might be that you are consistent if you make the supervision of the weighing follow the same pattern which was expressed yesterday on official inspection.

Another view of it would be the view that you have expressed.

Mr. BALDUS. But let me say this.

Is it your understanding that yesterday we caused the responsibility of grading to be the Federal responsibility at export points subject to delegation of States?

Mr. BOR. That is correct.

Mr. BALDUS. If we are going to make weighing follow that same pattern, then what we want to do is to make it the responsibility to weigh subject to delegation, is that correct?

Mr. BOR. The question really is whether you would want to make the supervision of weighing follow the pattern that was adopted by the committee yesterday or whether you want to go further and provide for not only the supervision but the actual weighing itself to follow the pattern of yesterday.

That is the decision that the committee has to arrive at.

Mr. BALDUS. Then is supervision the key word?

I'm talking about supervision versus responsibility.

The CHAIRMAN. It appears we are confronted by a problem of semantics which must be resolved if we are to progress. In other words, do you view supervisory authority for weighing as corresponding to the provisions for inspection and grading activities; or do you view direct weighmaster responsibility as being consistent.

Before recognizing anybody else, I would ask unanimous consent with respect to an unintentional oversight.

I neglected to include the language of the Weaver amendment, which tightens up the restrictions on the Secretary, in my weighing proposal. It would be consistent with what we did yesterday by requiring that the Secretary retain final authority.

If there is no objection to that, it is so ordered.

Mr. BALDUS. Would it be the chairman's opinion that yesterday we gave responsibility for the grading to be performed by Federal inspectors?

Mr. BERGLAND. Will the gentleman yield on that point?

Mr. BALDUS. Yes.

Mr. BERGLAND. The action yesterday adopted this.

The Secretary shall cause official inspection to be performed at export port locations for all grain required or authorized to be inspected by this act.

Then it goes on with the Foley amendment delegating to the States.

The provision that's pending differs in that "The Secretary shall cause the supervision of weighing at all grain received and shipped from export port locations."

The difference is, yesterday on grading we authorized the Secretary to cause official inspection to be performed and this proposition authorizes the Secretary to supervise.

The gentleman from Wisconsin is correct. They are not identical.

Mr. BALDUS. It seems to me that if we really wanted them to be the same, it would follow that they ought to be the same.

Then it would be necessary to have similar language so that it is not unfair.

Mr. POAGE. Will the gentleman yield?

Mr. BALDUS. Yes.

Mr. POAGE. The difference is that I cannot grade wheat nor corn nor cotton. I cannot grade them at all. Somebody has to be more or less an expert grader.

I can read the scales even if I have to put on my spectacles.

There is not a member of this committee who cannot read the scales and there is not a thing in the world in the weighing except the reading of the scales and an honest entry.

You don't have to have an expert to do the weighing. You have to have an expert to do the grading.

It seems to me that there is the difference.

Of course, if you want to do some featherbedding and employ some extra people who are not needed, then just put it in here and you will have one man standing here at the door and another one standing on the outside of the door.

I don't see the necessity of that.

If you are supervising that weighing, then all you have to do is have an honest setup.

A third-grade child can read the scales. They are written in English and they are written in pounds. Maybe we will change it to metric and maybe then you would have to employ somebody else, but maybe we don't have to reach that point.

Mr. BALDUS. My objective is that we have a clear understanding of what we are doing.

If we say that we are supervising and that anybody can do the weighing—and the Federal Government's responsibility is whether he is a private person who can read scales or whether he is from the board of trade or chamber of commerce or whether he is from a State agency—none of that matters if it is supervised.

If that is what we want to do, then we should know what is before us.

But if we want it to be either a Federal person doing the weighing or a State person doing the weighing under the delegation of the Secretary, then we ought to know that that is what we're doing.

Mr. NOLAN. Would the gentleman yield?

Mr. BALDUS. Yes.

Mr. NOLAN. I respectfully disagree with the gentleman from Texas.

It seems to me that this is the featherbedding proposal that we have before us—one requires one person to do the weighing and another to stand over and do the supervision.

If you want to reduce the number of Federal employees on weighing, then you might just as well make the same person responsible for seeing that it is done honestly and legitimately.

This would be better than having one person doing the weighing and one looking over.

Mr. POAGE. In most cases that would be true. But in some cases, it will not be true.

The CHAIRMAN. Counsel would like to make a comment.

Mr. BOR. Actually there are two different matters involved when you're talking about supervision of weighing and weighing.

We have the term "supervision of weighing" defined, that is, Mr. Fithian has it defined, in his amendment at the very last page. It means supervising the weighing process and the certification of the weights of grain and the physical inspection of the premises in which the weighing is performed to assure that all the grain intended to be weighed has been weighed and discharged into the elevator or conveyance represented on the weight certificate.

So it's a much more important function than standing at the scale and making certain that the figure which is represented on the scale has been set out in the weighing document.

It means supervising the entire process of weighing from the time that the grain has been discharged out of the conveyance and put on the scale and insuring that what is weighed is actually put into the conveyance where it is supposed to be placed.

As I understand it, the process as it is conducted today, you have two different persons involved in these functions, one involved in weighing and the other involved in the supervision of weighing.

As a matter of fact, you might recall there was a description by Department of Agriculture personnel of so-called class 1 weights, class 2 weights, and class 3 weights. The category depends on the nature of the supervision of weighing.

Class 1 is where you have continuous supervision of all the weighing. On class 2 and 3 weights, you have less supervision of the weighing process.

In these cases supervision might be conducted by a chamber of commerce, a board of trade, or perhaps by a State agency or by the Association of American Railroads.

But as it is conducted today, you do have supervision conducted by one set of people and weighing itself conducted by another set of people.

The CHAIRMAN. Let us not confuse things.

Under the present provision of the committee print, supervision could not be conducted by anybody but public officials, defined as either USDA or delegated state personnel.

One of the options that we might consider is requiring that the weighing itself be done by either USDA personnel or delegated authorities, as has been suggested by Mr. Baldus.

The other possibility would be to broaden the meaning of supervision to include discretionary authority for the Secretary to require that the weighing itself be conducted by either USDA or delegated State personnel if, in his judgment, this would be more feasible and practical.

May I ask the Under Secretary if he wishes to comment on this.

Mr. Under Secretary, do you think that giving additional flexibility to the Secretary would ease or complicate the problem?

Mr. KNEBEL. Mr. Chairman, we have generally viewed the operation of the scale as really an act which is part of the warehousing operation and not part of the supervisory function.

We would like to leave that to the elevator operator. We feel it is essentially a ministerial act.

Mr. FITHIAN. While the distinguished Under Secretary has the microphone, I was never clear prior to this so I would like to get a fairly straightforward comment as to whether or not the elevator personnel doing the weighing and the Federal or delegated State personnel supervising the weighing would require more people to be paid to do the weighing process?

This would be in contrast to going back to the Krebs concept which Mr. Baldus has now raised and, therefore, would have the USDA or delegated State personnel do the weighing.

In other words, which of these technical people?

Mr. KNEBEL. It is going to depend somewhat on the nature of the elevator, Mr. Fithian.

In some instances, the scales can be operated by people right in the headhouse.

It will not result in any additional people for the elevator operator to run this operation.

Similarly, if we took it over and did it ourselves, then it would not result in any diminution of the number of people that the elevator operator would have to employ to run his elevator.

Mr. FITHIAN. You said that is in some elevators. Could you go out to other elevators?

Mr. Under Secretary, what I am really trying to get at is the cost of the operation.

If I believed that it would cost less, inasmuch as somebody has to pay for this, then—that is, to have Federal or delegated State personnel actually do the weighing—than it would to have them do the supervision of private persons doing the weighing—then my attitude toward this would change appreciably.

I do not wish to burden the producer or consumer or the purchaser with additional or unnecessary cost.

I simply have failed to get a reply to that.

Mr. KNEBEL. Mr. Fithian, I am giving you the best response that I can.

What I am saying is that I don't see that the number of employees at the elevator is going to change one iota.

They have them there now. I don't think they're going to save one man if we take over the weighing.

Similarly, if we were to do the weighing, there will be a Federal man looking at the scales. He cannot do anything else so he is essentially going to be a scale supervisor.

My point is that the operation of the scales themselves by the elevator personnel is something which they do incident to several other functions.

Mr. FITHIAN. Mr. Chairman may I inquire what amendment we are now discussing?

The CHAIRMAN. There is no amendment before the committee at the moment, although I do plan to offer two.

My first amendment would strike section (b) of the Fithian amendment and replace it with option No. 1 of the committee print calling for a study of inland weighing, which is to be accomplished 1 year following the enactment of the act.

Mr. THONE. Will the chairman yield at this juncture?

I think it's important within the context.

The CHAIRMAN. Let me state one thing first.

I also plan to offer an amendment to subsection (c) which will amend it to read: "The Secretary may provide that the weighing and the inspection and testing of scales at locations described in subsections (a) and (b) shall be performed by authorized employees of the Department of Agriculture or by State," strike local agencies, "designated by the Secretary in accordance with this Act."

That, in effect, would give the Secretary discretionary authority to mandate that the weighing and testing of scales, in addition to the supervision, be conducted directly by authorized personnel of the Department of Agriculture or by delegated State personnel.

Although he would not be obliged to do this, he could if he believed it would facilitate the operation of the act or eliminate unnecessary duplication of personnel.

I offer this as a means of alleviating the concern of those who feel the Secretary would be forced into a situation of unnecessary duplication of personnel, thereby running up extra costs when it might actually be better to have public personnel perform the weighing directly.

Mr. THONE. That was a long sentence, but it was a good one.

Frankly, it covered exactly what I was going to touch on.

In addition, let me say this.

Those of us who were down at the gulf ports came away with the conclusion that weighing just had to be addressed in this legislation.

I think all of the insiders down there advised us in that direction.

I'm not sure now about the exact way to do it; after the vote yesterday I am willing, as I said at the outset, to accommodate here so that we get this bill moving. Or we are going to be here until who knows when.

I have one suggestion, Mr. Chairman.

As I understand it, before us are two Foley amendments, and one we just adopted. The one now offered strikes from the Fithian amendment subsection (b) which so disturbed the gentleman from Iowa, Mr. Grassley.

I think rightly so because he argued well that pretty soon the long arm of the Federal Government was going to be unnecessary in the local elevators.

I think we are all opposed to that.

However, we do, of course, keep section (a) of Fithian which causes the supervision of weighing at the export level.

The amendment now offered by the chairman provides that we have a study in the interior market concerning the supervision of weighing, the weighing and certification of weights, the testing of the scales used in weighing of grain, and so on.

Your language states: "At locations other than those described in subsection (a)."

In other words, this study would cover everything except the weighing at the export level which is the part that is obviously of concern to Mr. Baldus, Mr. Noland, Mr. Harkin, and others of us.

The study would not cover the weighing and the certification of weights at the export level.

This frankly is an area that should be covered, and I would like to ask unanimous consent that we delete on line 4 of your amendment the words following "grain": "at locations other than those described in subsection (a)."

Then the study that you are talking about would cover the entire weighing procedure.

The CHAIRMAN. I have no objection to conforming the amendment with that purpose in mind.

Mr. THONE. I then would move that this amendment be passed and I ask the previous question.

Mr. FITHIAN. Reserving the right to object, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized.

Mr. FITHIAN. I am not entirely clear exactly what is being stricken.

The CHAIRMAN. I am proposing to strike your section (b) and to substitute therefor a requirement that the Secretary shall undertake a study concerning the supervision of weighing, the weighing and certification of weights, and the inspection and testing of scales used in the weighing of grain at all locations prescribed under the act. Further, I propose that the Secretary shall report the results of the study to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry not later than 12 months after the effective date of this act together with any recommendations for legislation that he determines to be necessary for strengthening the adequacy and reliability of the system.

Mr. FITHIAN. Does that not constitute a complete inversion of your amendment which, as I understand it, was designed to complement the amendment under consideration which I have offered in that we would proceed to have the export terminals—

The CHAIRMAN. The gentleman is incorrect.

It would proceed directly to mandate supervision of all export grain weighing, either by direct USDA personnel or delegated State personnel.

Then it would provide additionally for a study of the whole system, including the nonexport ports the results of which would be reported within 12 months after the enactment of this legislation.

Mr. FITHIAN. Is that not at locations other than those described?

The CHAIRMAN. The gentleman from Nebraska has just suggested that the study perhaps should include a review of what we have done at the export ports in case the Secretary wants to report back on that as well.

The study would in no way interfere with the immediate requirements for supervision at export ports.

We would be establishing Federal supervision at export ports now while at the sametime mandating a study of the entire weighing system, the results of which would be reported to us 12 months after the enactment of the act.

Mr. FITHIAN. The whole system defined as export as well as inland terminals?

The CHAIRMAN. Yes. In this way the Secretary has the option of returning in 12 months to say that he needs stronger authority or to offer any comment he may wish.

The gentleman from Nebraska felt that we should not deny the Secretary an opportunity to comment on the export ports as well as the inland ports. Nothing in this section (b) however would interfere with the immediate requirement that he conduct supervision of weighing at export ports while the study was in progress.

Mr. FITHIAN. May I require of the gentleman from Nebraska—

The CHAIRMAN. By the way, that system would be permanent unless changed by law.

Mr. FITHIAN. I understand.

May I ask Mr. Thone whether or not his objection indeed was that we would somehow preclude the Secretary from studying the export terminals or was his objection that we would enable the Secretary or direct the Secretary or authorize the Secretary to report back to us with a study of other than export terminals?

That is the substantive question.

Mr. THONE. The chairman stated my position accurately.

I was concerned that the Foley amendment as offered precluded including in that study the weighing and certification of weighing at the export level.

That concerned me very much because frankly that is where I want close supervision and control.

Mr. FITHIAN. I have one last question, Mr. Chairman.

May I ask counsel if we accept the lining out of the words of grain at locations other than those described in subsection (a) from Mr. Foley's pending amendment—does the act that we are about to perfect, as you see it and as drafted here, direct the Secretary to conduct a study of weighing procedures at other than export terminals? Or is this act, as now being finalized, dealing only with export terminals?

Mr. BOR. Subsection (b) is unlimited as to the nature of the study. It would not prescribe the study at points solely at export locations.

The CHAIRMAN. We could specify that he report the findings of his study of both export and other-than-export port locations.

Mr. FITHIAN. That would help me a great deal.

The CHAIRMAN. Without objection that will be included in the draft.

Mr. GRASSLEY. Mr. Chairman I would like to speak in support of the Foley amendment and say that this will give us an opportunity within 1 year in the future to make a determination as to whether or not there are problems which require Federal intervention at those points.

Unless we do go the route of the Foley amendment, then we will end up with the language of the Fithian amendment, and it would mean that we could be there almost tomorrow by administrative edict.

I think something as far-reaching as having the Federal Government involved with the supervision or even involved in the weighing of

grain at the local elevator, ought to be a determination made by the Congress and not by some administrator.

Consequently, I am going to vote for the Foley amendment and urge everybody else to.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. Thank you, Mr. Chairman.

Would you give me the additional wording that you're putting into this amendment?

The CHAIRMAN:

The Secretary shall conduct a study concerning the supervision of weighing, the weighing and certification of weights, and the inspection and testing of scales used in the weighing of grain at both export locations and other-than-export locations as determined by this act. The Secretary shall report the results of the study to the House Committee on Agriculture, etc. * * * not later than 12 months.

Mr. FITHIAN. Thank you, Mr. Chairman.

Coming from quite a different position than the gentleman from Iowa does, I too want to support this amendment, but I am supporting it because I believe if left to the present Department of Agriculture, the authorization for them to look into matters other than that which they are directed to would result in no action at all, rather than the action of extending the long arm of the Federal Government.

So I am fully in support of the Foley amendment. I am happy to see it added to my amendment.

Mr. BERGLAND. Mr. Chairman, referring to the Fithian amendment, page 2 on the bottom line, item 3 says:

The Secretary shall prescribe by regulation the standards, procedures, and controls for accurate weighing and certification of weights of grain including safeguards of equipment calibration an * * *

Does that provision not conflict with the gentleman from Washington's amendment wherein he states that they should undertake a study of this and other matters?

The CHAIRMAN. Will the gentleman restate the question?

Mr. BERGLAND. Referring to the bottom of page 2 of the Fithian amendment, item 3 reads in my copy:

The Secretary shall prescribe by regulation the standards, procedures, and controls for accurate weighing and certification of weights of grain * * *

It seems to me that conflicts with the amendment offered by you, Mr. Chairman, where it states:

The Secretary shall conduct a study concerning the supervision of weighing, the weighing and certification of weights, and the inspection and testing of scales, etc.

It seems to me to be consistent we ought to strike those words found on the bottom of page 2 starting with the words "the Secretary shall."

The CHAIRMAN. I intended to do that.

If this amendment is adopted, then it would be my thought that we would eliminate all other requirements except those provided in the amendment I plan to offer for subsection (c) giving him the right to directly impose weighing responsibility at export ports.

Mr. BERGLAND. The gentleman then would move to strike sections d, e, f, and g in the Fithian amendment. Is that correct?

The CHAIRMAN. Will counsel respond to Mr. Bergland?

Mr. BOR. Mr. Chairman, the section to which Mr. Bergland makes reference would tie in with what happens at export locations should the Secretary wish to undertake weighing activities and the testing of scales.

This would provide him the authority to set out what the standards would be so that it would give him the necessary ammunition to carry out whatever authority has been vested in him under the subsection (c) provision.

It would be useful if this would be discretionary rather than mandatory with the Secretary.

The CHAIRMAN. Would this deal only with export port locations?

Mr. BOR. Yes.

One thing you would need to do would be to drop out the reference to subsection (d) so that this authority would apply—

The CHAIRMAN. That's my intent.

It would drop the reference to inland points while retaining the authority of the section as it deals with export locations.

Mr. BERGLAND. If the balance of the amendment were to conform with the proposition advanced by the gentleman from Washington, the word "shall" would be changed to "may."

Mr. BOR. Yes.

The CHAIRMAN. A reference to section (b) would be excluded, inasmuch as the original section (b) deals with the inland points.

Mr. BERGLAND. I understand.

The CHAIRMAN. I think the Under Secretary wants to make a comment.

Mr. KNEBEL. Thank you, Mr. Chairman.

This is with respect to the changes that you had also suggested in subsection (c) wherein, I believe, you are requesting the deletion of the words "or local agencies or other persons."

I would like to call to the committee's attention the fact that while we would very much intend to check the scales in each and every State, we do not have the physical wherewithal and the equipment and the technicians to get into checking the scales.

The CHAIRMAN. What you are suggesting is that the language stating "where by local agencies or other persons designated by the Secretary," be included.

Mr. KNEBEL. We would like to leave it in so we would have the right to contract with the manufacturers of a scale to come in on an unprejudiced basis and be an agent of the Secretary to perform that function.

The CHAIRMAN. It just expands the Secretary's authority.

We can deal with that in a moment.

I think that may be a good suggestion.

Mr. HARKIN. I would address my remarks to my colleague from Iowa, Mr. Grassley, who is stating that what we need is further study on these.

I would ask my good friend from Iowa if he has ever read the report of the Comptroller General of the United States—otherwise called the GAO study.

It has a blue cover on it.

It took them about 1 year to do it.

It was an entire study of the entire grain inspection system and weighing I might add.

It is quite detailed. It has a lot of data in it.

It is done by probably one of the most respected arms of the Federal Government, one which is probably more free from politics than any other branch of the Government.

I would say more free than any other except the court system.

I wonder if the gentleman has ever read it, because this is the study that was done.

They have recommendations in there as to what we should do on inspection, weighing, grading.

It seems to me if we say we are going to have another study done by the Department of Agriculture, then we are adding one study on top of another study. When we get done with that study, maybe we'll have an HEW study.

Then maybe we'll have somebody else study it a year after that.

It seems to me that this is the study that was in-depth and which laid out all of the problems inherent in this system.

They have come up with certain recommendations. The recommendations are basically on the front cover. So I don't think we need another study.

MR. GRASSLEY. I think the gentleman is not only insulting to my intelligence but also to the intelligence of the chairman who offered the amendment.

Obviously we read it. That is what we get paid for.

What we are asking is that we get a study conducted just on this sole point. We can focus particularly on the internal points to determine whether or not we need weighing there.

We don't want the investigators running all over the world, as they did in the case of the study that you mentioned.

It is going to be focused entirely on the one aspect that we have in question.

MR. HARKIN. I don't think that there is any need for weighing at inland points other than the major inland terminals.

Perhaps the gentleman from Iowa might disagree. Maybe you think that there ought to be Federal weighing people at all of the country elevators.

I don't think that we need that. But I do think that the GAO report was quite accurate when it said that we needed Federal inspection and weighing at all of the export ports and at the major inland terminals. Those handle over 50 million bushels a year.

I think that the study was done quite thoroughly by the GAO. I don't think that we need another study.

THE CHAIRMAN. The purpose of this study, as the gentleman from Iowa suggested, is to focus on a particular problem, in this case to what degree the Federal presence should be involved in the supervision of weighing at inland points.

I know there are many members who are somewhat cynical about studies, but it does mandate some followup activity by the Department of Agriculture. It mandates the USDA to come back with recommendations 1 year from now, so that this committee and the Senate committee can focus their continued examination on those recommen-

dations and make a determination as to what changes are needed in the new law.

I do not personally think that the USDA, without a massive effort, is ready to undertake the supervision, including perhaps the direct weighing operation, at all export ports and inland locations this year, even under the GAO requirements.

As the gentleman from Iowa knows, there was a suggestion that this be staged. It cannot be accomplished overnight.

If we required the USDA to undertake the complete operational supervision of all the weighing activities at all the inland points as well as the export ports now, then in a year we would have nothing but confusion. In all likelihood we would not get the job done even at the export ports as expeditiously and well as we wished.

The gentleman from Iowa, Mr. Harkin, does not believe that we should include country elevators. In his view, he thinks that the weighing provisions ought to apply to 50 million bushel terminals and above. That is something we can examine, I think, very specifically next year.

I know the gentleman feels that should move right now to mandate Federal control of weighing at 50 million bushel terminals and above. For the purpose of my amendment, however, I want to accomplish this at the export ports in the next year. Then we can have the Department come back to give us their recommendations as to what should be done at the inland points.

The committee will then have to make a decision if this amendment is adopted.

I recognize Mr. Nolan.

Mr. NOLAN. As Mr. Harkin has pointed out, inasmuch as GAO has already done a study on this subject, why are we now asking the Department of Agriculture to do this more specialized study?

The CHAIRMAN. What the GAO does is to assign some highly capable investigators and analysts, who have to be responsible for many different operations of Government, to review a particular problem.

In other words, the GAO has within its employ a number of investigators and analysts whom it assigns to each study it is asked to conduct. Since the GAO itself does not specialize in any specific area except investigation, analysis, and evaluation, often those people who undertake any study do not have a high degree of expertise of specialization in the particular area under scrutiny. I mean no disrespect to the General Accounting Office in what I say. It has a well-deserved reputation for work of the highest quality. In any event, what this amendment calls for is the specific expertise of the Department of Agriculture, which ultimately would have to carry out those responsibilities which resulted from implementation of the recommendations.

That is a different kind of mandate.

For although the recommendations of the GAO may include extending Federal supervision to the country elevators, they do not give us specific information about how many personnel that requires, what the complications of administration are, how it might be funded, what the costs would be, and so on. These are very specific answers that would have to come from the Department.

The GAO recommends what it feels should be done, based on its study of the problem. We must then go to the Department immediately concerned to find out if and how it can be accomplished.

Mr. NOLAN. Mr. Chairman, I was not suggesting that.

I was suggesting that they have the personnel. They have been working on it. They have been studying the subject.

It would seem to me to make sense to assign this task to them as well.

They are geared up for it.

Besides, they are more of an objective observer than is the Department.

Whatever kind of system is recommended, the GAO would be more objective, I think.

The CHAIRMAN. I guess I do not quite share the gentleman's belief that only the GAO can do a useful study.

Mr. NOLAN. I was not suggesting that the only appropriate agency was the GAO. I was pointing out the obvious conflict of interest that the Department has in studying its own operations.

Mr. THONE. Mr. Chairman, I would move the previous question. I believe we are drifting again.

The CHAIRMAN. Mrs. Heckler?

Mrs. HECKLER. I think that the difference between the GAO inspection or audit and that of the Department of Agriculture is—one is completely serious about an investigation and one is committed to follow through. The difference is between an abstraction on the one hand, which is the academic investigation which the GAO does so well, and an inspection which combines theory and practice. It is not merely a theoretical overview, but one that does take into account some of the problems in the field.

My concern is that, from the correspondence I have received from employees working in the port areas, they are concerned about their jobs. They are very critical of the Department of Agriculture. They feel they have had no communication, the oversight has been lax, and the Department has not communicated even failures.

When well-intentioned employees or groups were on the wrong course, they were not made aware of their deficiencies.

I intend to support your proposal, Mr. Chairman. But I would hope that this study would include an element of self-examination by the Department which could certainly resolve many of the problems.

Mr. NOLAN. You have pointed out to us that the people within the Department of Agriculture themselves did not have confidence in the Department.

Mrs. HECKLER. I am saying workers, not people in the USDA. I am talking about workers at the ports who are confused. They have complained of a lack of debate and lack of communication as to the fact that they have not received any information. There has been very little critique by the Department.

I think in reexamining this system, the Department can reexamine its own role and propose in-house changes which could resolve the difficulties.

Mr. NOLAN. My point is simply that you have pointed out that there is not a great deal of confidence in the Department. Now you are asking them to study themselves.

Mr. THONE. I move the previous question.

Mr. DE LA GARZA. I have not been heard, Mr. Chairman. But I do not want to be heard at this point.

The CHAIRMAN. The previous question has been moved.

The previous question is ordered.

All those in favor of the amendment to section (b), as offered by the Chair, signify by saying aye.

Those opposed?

The ayes appear to have it.

The ayes have it, and the amendment is agreed to.

The Chair would now like to offer his amendment to section (c), as follows:

(c) The Secretary may provide that the weighing and the inspection and testing of scales at locations described in subsection (a) shall be performed by authorized employees of the Department of Agriculture or by State or local agencies or other persons designated by the Secretary.

The purpose of this is to allow the Secretary, in the course of his supervision of weighing at export ports, to specify who shall perform the weighing and testing of scales. Additionally, it would give him authority to determine by whom the physical weighing and related activities will be carried out.

Mr. KELLY. Mr. Chairman, would you restate the amendment?

The CHAIRMAN. The amendment is to section (c) of Mr. Fithian's amendment. It would be as follows:

(c) The Secretary may provide that the weighing and the inspection and testing of scales at locations described in subsection (a) "—that is, export locations—" shall be performed by authorized employees of the Department of Agriculture or by State or local agencies or other persons designated by the Secretary.

It strikes the rest of the subsection (c) and any reference to subsection (b).

Mr. BOR. Mr. Chairman, was it your intent to drop the balance of the section which sets out the standards for designating—

The CHAIRMAN. No. It was my intention to eliminate section (b) throughout and to substitute "may" for "shall."

Mr. BERGLAND. I did not understand counsel's question.

Mr. BOR. My question was whether the amendment was intended to drop everything that followed the words "the Secretary" at the end of the fourth line of subsection (c).

The CHAIRMAN. The answer is no, with the exception that reference to subsection (b) is to be excluded where it appears. In other words, we are dealing only with export port locations.

Furthermore, this provision is to be discretionary.

The previous question has been moved and is ordered.

All in favor of the previous question, signify by saying aye, those opposed no.

The previous question is ordered.

The ayes appear to have it.

The ayes have it, and the amendment is agreed to.

Mr. FITHIAN. May I inquire of the distinguished Under Secretary for a clarification of his earlier comment?

As you have now amended my amendment, it would allow the inspection of the scales, et cetera, to be done by private personnel.

Is that correct?

The CHAIRMAN. The Secretary is required to conduct supervision of weighing or to allow that supervision to be provided by delegated State personnel.

He is also authorized to require that the actual weighing and testing of scales, as distinguished from supervision of weighing, be conducted by USDA employees, State or local agencies, or other persons.

In other words, this additional authority lets the Secretary specify who does the weighing and the testing of scales in addition to requiring that these activities be directly supervised by the USDA personnel or with delegated State personnel.

I am talking about the specific ministerial responsibility of weighing. It provides additional authority rather than weakening the requirement for supervision. It is an extrapolation of his authority.

Mr. FITHIAN. Thank you.

Mr. KREBS. My apologies, but I am confused as to which location we are talking about.

The CHAIRMAN. Only export locations are being discussed.

I thought we had settled the question of inland points, which will be the subject of a comprehensive study by the Secretary.

Mr. KREBS. I was afraid of that.

I wanted to make sure that I understood.

It seems to me that by injecting the local element, this goes beyond the votes that were taken yesterday. I do not recall that being involved yesterday.

The CHAIRMAN. What we are debating this morning is whether we give the Secretary strictly supervisory authority while allowing local elevator employees to perform the actual testing and weighing, or whether, in addition, to provide him the possibility of specifying what these employees can or cannot do. In other words, should he have authority to say that these functions must be carried out by some specific local government or a person designated by the Secretary.

I think you view this addition as a restriction on the authority of the Secretary to supervise weighing, although it is not intended for that purpose. Instead, it is meant to go beyond that by allowing him to actually determine who is to do the work of the scale testing and weighing.

Under the provisions of this amendment the Secretary could tell the local elevator, "You are going to have to do this with a State man, or you are going to have to do it with the USDA official, or you are going to have to do it with X-contractor organization A or C."

I want to make it clear that this does not weaken the supervisory authority but, rather extends it into a discretionary authority allowing the Secretary to designate who provides the testing, and who does the weighing.

Under this authority, the Secretary could say that he had a lot of trouble supervising the weighing process at a particular terminal warehouse. Moreover, he could say, "I am going to tell you, terminal A, that you no longer can have your employees doing the weighing. They are going to have to be our employees. They are going to have to be employees of the State of Oregon, or they are going to have to be persons that we designate."

Mr. KREBS. Thank you for clarifying.

The CHAIRMAN. Mr. McHugh?

Mr. McHUGH. Mr. Chairman, I have a question which perhaps you can clarify for me. It relates to something we have discussed here; specifically, supervision and what it means.

We have had some discussion about class 1, class 2, class 3, and class 4 supervision.

However, we do not specify in our bill the type of supervision we are directing the Secretary to be responsible for.

Can you clarify for me what your intent is, and perhaps what the committee's intent is, with respect to "supervision" as we use that term in subparagraph (a)?

Does the Secretary, for example, have the discretion to adopt at various elevators class 4 supervision as opposed to class 1 supervision?

The CHAIRMAN. Mr. Fithian's amendment states. "* * * shall cause the supervision of weighing of all grain received * * *."

Does counsel want to comment?

Mr. BOR. The way this is drafted, it leaves discretion to the Secretary to determine the nature of the supervision which is required at any particular point.

As some points, he may determine that there has to be continual supervision, and at other points he may determine that supervision is not necessary on a 100-percent basis. Maybe an 80-percent basis would be advisable, but this would be left to his discretion under the terms of this amendment.

Mr. McHUGH. I suppose there is no point in belaboring this. We have already voted. But therein lies a great deal of my reservation about this.

We are leaving to the Secretary of Agriculture so much discretion that we might have very little supervision, even at export points where it has been clearly demonstrated that there have been substantial problems.

The CHAIRMAN. I think there are two things that protect against inadequate supervision by the Secretary.

In the first place, there has been a scandal. There is no question about that, and this legislation arose in response to disclosures of what has occurred.

If this amendment making the Secretary responsible for the supervision of weighing is adopted and further weighing scandals develop, he is going to have a difficult time explaining why he did not undertake closer supervision.

Second, as Mr. Thone's addition to my amendment provides, a year from now he is going to have to come back to us with a report, and recommendations on the question of weighing at export ports, as well as at inland points.

If you mandate class 1 supervision of all export weighing, it will involve a very heavy requirement for additional personnel. The question is whether the Secretary should have some discretion or flexibility.

Based on the experience of my 12 years in the Congress, all the legislation that has been before this committee has required that some determination be made as to how much discretion the Secretary of Agriculture will be allowed.

Furthermore, if you examine the majority of these agricultural acts, you will find that a great deal of discretion has been given him.

Naturally, every once in a while, someone will attempt to alter this by pinning him down. Unfortunately, the moment you put a specific

requirement into law, you have to live with it; and it is totally inflexible, it limits managerial flexibility and generally involves heavy spending.

I personally feel we should give him discretion.

After all, we currently have no requirement for the supervision of weighing. In this respect, we are already taking a major step.

Mr. BALDUS. Will the gentleman yield on that point?

I am concerned about that, because as I understand it there is a Federal licensing law now.

Licensing, it seems to me—that is, if you have the ability to give the license, then you have the ability to take it away. And, if you have the ability to supervise, then you have the ability to see if the privilege is being correctly conducted.

The CHAIRMAN. We are going much farther than that.

We are not just withdrawing the warehouse license; we are telling even unlicensed terminals dealing at the export points how to conduct the weighing.

Mr. BALDUS. I would like to ask the Under Secretary if he has examined this so that, if there is any question about being able to do it, whether that responsibility rests with you.

Mr. KNEBEL. Mr. Baldus, we have looked at this. This comports with the action we have already initiated within the Department on February 12.

We met with the chief executive officers of the major grain exporting companies. We have asked them to voluntarily come in to an affirmative action program which envisions class 1 weights at all export points and elevators.

We are presently working with these companies to get them into this posture right now. I think you are going to find that the attitude of this Department is going to be very positive and aggressive in the coming year.

Mr. BALDUS. There is no question about the responsibility to monitor those licenses and pull them if they are being abused, is there?

Mr. KNEBEL. As I said last Tuesday, when this committee began its markup session, I think that we are starting out with a major premise that the Department has not done enough, or been vigilant enough in the past. That is behind us.

We are going forward with what I feel is a very aggressive stance.

Mr. BALDUS. Thank you, Mr. Chairman.

The CHAIRMAN. I recognize Mr. Moore.

Mr. MOORE. Mr. Chairman, I have an amendment which will take 2 minutes.

Due to the fact that this matter is so important to my State, and I feel the committee made an error in rejecting my amendment yesterday, I am offering it again to give you a chance to accept it.

Let me simply state what the amendment does. Subsection (a) of the Fithian amendment allows the Secretary to delegate authority to trade organizations or other organizations, and you failed to adopt it.

It would have been improper to offer it to the Foley amendment at that time.

I ask you to reconsider the matter. These people are capable of doing a good job. This would be especially true under the threat of having their licenses lost.

The CHAIRMAN. Without objection, the previous question is ordered. Those in favor will raise their right hands.

Those opposed?

There being 5 ayes, and 12 nays, the amendment is not agreed to.

Mr. HARKIN. When does the chairman feel that we will be ready for a final vote?

The CHAIRMAN. In the few moments remaining, I would like to complete action on the Fithian amendment as amended. This will conclude, as far as I can tell, the provisions with respect to the weighing issue.

Then, tomorrow it will be my intention to proceed with Mrs. Heckler's amendment on conflicts of interest and other remaining matters.

We are anticipating that next Tuesday and Wednesday may be taken up with final action on the committee print. At that point, the Chair intends to instruct the staff to prepare a clean bill, incorporating the provisions and judgments of the committee, and to invite the cosponsorship of any members of the committee who might wish to have their names placed on the bill. Once this is done, the clean bill will be brought back to the committee, probably late next week or early the following week, for the purpose of voting as to whether to report that bill to the floor of the House.

Mr. THORNTON. A parliamentary inquiry, Mr. Chairman?

In connection with the consideration of the Fithian amendment, which is forthcoming, do I understand that the Chair will offer an amendment to strike, or amend subsections (d), (e), and other portions of that amendment? Or has that action already occurred.

The CHAIRMAN. Section (a) has been amended. Section (b) has been stricken, and section (c) has been amended.

I would propose to amend section (d) by striking the words "the Secretary shall," and substituting "the Secretary may,". I further propose to eliminate all references to section (b) which deals with the inland points. The rest, I think, is consistent with the adoption of the amendments to (a), (b), and (c); and I am not going to offer any other amendment.

Mr. THORNTON. I just wanted to make sure that that had been done by unanimous consent or otherwise accomplished.

Mr. THONE. I have one other thought.

I would like Mr. Fithian's attention on this.

As I read the committee print, when it was drafted it did not envision any weighing provision whatsoever.

As I read it, section 17 of the committee print is a very, very important one.

This is the provision that puts the felony provision of section 201 of title 18 in place. It provides that any person who is in an official inspection function is within the purview of that felony section. But, I do not believe, Mr. Fithian, that your weighing amendment would do the same thing for any person involved in that function.

I would ask unanimous consent, Mr. Chairman, that the staff be allowed to perfect the Fithian amendment so that those personnel also would be included under section 201 of title 18.

The CHAIRMAN. Does the staff understand that request?

Mr. THONE. Mr. Bor, do you agree?

Mr. BOR. There is another matter for consideration, and that is on page 25.

Mr. THONE. But do you agree that the weighing personnel would not be included within the purview of 201 title 18 as now drafted?

I do not see it anywhere.

I would like to have these sections harmonized so that there is no question about it at all.

I think one of the things that has been pointed out here is that we really want to stiffen the penalty section.

The CHAIRMAN. That is not contained in the Fithian amendment, it could be brought up, however when we take up the other sections.

Mr. THONE. It must be harmonized in section 17 when we get to it.

Mr. BOR. Yes.

The CHAIRMAN. I think that would be preferable.

I would like to reach a conclusion on this amendment at noon.

Mr. BEDELL. I have withheld from speaking all morning.

I would like to address the Under Secretary.

It is my understanding that the affirmative action agreements do call for class 1 or 100-percent supervision of weighing.

Is that correct?

Mr. KNEBEL. All those covered by the court do. We have been negotiating for those companies without a court order and we are striving to achieve class 1.

Mr. BEDELL. It is my further understanding, with my talk with you, that, if this passes as it is now, we can anticipate that it would be the plan of the Department to move toward 100-percent supervision of weighing at export points.

Am I correct?

Mr. KNEBEL. That is correct.

Mr. BEDELL. I would like to see that as part of the record, Mr. Chairman.

The CHAIRMAN. It has just been made part of the record.

Mr. Moore?

Mr. MOORE. A parliamentary inquiry: I understand that you want to conclude consideration of the Fithian amendment today?

The CHAIRMAN. Yes.

Mr. MOORE. Then I would like to offer a substitute which I think likewise might not take very long.

The CHAIRMAN. The gentleman will state it.

Mr. MOORE. I have lost my optimism today.

I would like to offer, as a substitute for the Fithian amendment, section 8 of the committee print, which is option number one on weighing, calling for a study.

We have already debated about the study, but I think everybody ought to have the opportunity to vote, inasmuch as, if we vote for the Fithian amendment, then other options will be concluded.

I favor a complete study rather than ordering a study of Federal supervision and weighing.

Therefore, I think everybody ought to have the opportunity to vote on this, since now is the only time we will have to do so.

I, therefore, offer my substitute and ask that, if you want to have section 8 language in the bill, support it as a substitute.

Mr. FITHIAN. I want to oppose my friend from Louisiana in the strongest possible terms. I think it will accomplish nothing.

The CHAIRMAN. The Chair would like to ask unanimous consent that the staff be authorized to conform the text of the Fithian amendment to sections (c), (d), and remaining sections to eliminate all references to inland points other than those contained in the amended section (b).

Also I would like the staff to be allowed to conform section (d) and the remaining sections to require discretionary authority.

Mr. BOR. By way of clarification, Mr. Chairman, at the bottom of page 2 in subsection (c) there is authority for "the Secretary to investigate weighing and the certification of weight of grain shipped in any state of foreign commerce."

This is without limitation on where the investigation might take place.

The CHAIRMAN. If we are going to mandate a study by the Secretary at inland points, I think he has to be authorized to investigate the inland points before imposing any requirements.

For that reason, this section allows him only to investigate.

Mr. BOR. Similarly, in the second provision it says:

The Secretary is authorized to require by regulation maintenance of complete and accurate records of weighing of grain for such period of time as the Secretary determines is necessary for the effective administration and enforcement of this Act.

The question arises whether it is your intent to leave it intact as applying throughout the country, or just applying to export port locations.

The CHAIRMAN. I would suggest leaving it because the Secretary ought to be able to require that records be kept. I think almost all State laws require that.

In order to proceed with the study he is going to have to rely on records.

If there is no objection, the vote will now occur on the Moore substitute which replaces the provisions of the Fithian amendment as amended with a study.

All of those in favor of the Moore substitute, will raise your right hands.

The CLERK. Two.

The CHAIRMAN. Opposed?

The CLERK. Twelve.

The CHAIRMAN. There being 2 ayes and 12 nays, the substitute is not agreed to.

Without objection, the vote now occurs on the Fithian amendment as amended.

All those in favor, signify by saying aye.

Opposed?

The ayes appear to have it.

The ayes have it, and the amendment as amended is agreed to.

The Chair wishes to thank the members for their attendance today. I think we have made substantial progress. We will begin our meeting tomorrow with consideration of the amendment by the gentlelady from Massachusetts.

Mr. Harkin?

Mr. HARKIN. The bill that was just passed around was introduced by Mr. Melcher and myself last week.

It is the copy of the Senate bill and the one I intend to offer as a substitute.

The CHAIRMAN. Mr. Harkin has advised the committee that he intends to offer this as a substitute at the end of the consideration.

The committee stands adjourned.

[Whereupon, at 12 noon, the meeting was adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

THURSDAY, MARCH 4, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Melcher, Mathis, Bergland, Bowen, Litton, Breckinridge, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, Jenrette, D'Amours, Thornton, Wampler, Sebelius, Thone, Johnson, Madigan, Heckler, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Gene Moos, staff analyst; John M. Lindley, Nick Ashmore, Glenda Temple and Susan Bell, staff assistants; L. T. Easley, press assistant; James A. Culver, staff consultant, Subcommittee on Dairy and Poultry; Alan Gray, staff consultant, Subcommittee on Livestock and Grains; Jerry Jorgensen, staff consultant, Subcommittee on Department Operations, Investigations and Oversight.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee is meeting for further consideration of proposals affecting the Grain Standards Act.

This morning I thought that we might proceed to discuss the conflict of interest provisions and proposed amendments to that section of the committee print.

I recognize the gentlelady from Massachusetts, Mrs. Heckler.

Mrs. HECKLER. I have a new version of my amendment.

The conflict of interest proposal which I suggest states as follows:

(b) (1) No official inspection agency, or any member, director, officer, or employee thereof, and no business or governmental entity related to any official inspection agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the transportation, storage, merchandising, or other handling of grain, or the use of official inspection service; and no business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial interest in, any official inspection agency. Further, no substantial stockholder in any incorporated official inspection agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting, any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder

in, or directly or indirectly have any other kind of financial interest in, any official inspection agency.

(2) A substantial stockholder of a corporation shall be any person holding two percent or more, or 100 shares or more, of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to another entity if it owns or controls, or is owned or controlled by, such other entity, or both entities are owned or controlled by another entity.

(c) The provisions of this section shall not prevent an official inspection agency from engaging in the business of weighing grain.

A new section (d) to cover the most recent actions of the committee as follows:

(d) Persons authorized by the Secretary to perform supervisory weighing functions, as provided in Section 8 of the United States Grain Standards Act of 1975, shall be subject to the provisions of Subsection (a) of this Act.

This means that the conflict of interest standard would be applied to State agencies as well.

The thrust of this amendment, Mr. Chairman, does not go as far as the GAO would like. They would like to have us prohibit all actual or potential conflicts of interest.

Throughout the debate on this bill in this committee, I have felt that the conflict of interest question was central to the integrity of the system.

What we are really talking about is a system which has enormous value to the United States and great significance to the farm States. It is a system which has been the victim of enormous criminal action. Much of that criminal action has been related to conflict of interest.

In the GAO report their strong findings and recommendations for a total conflict of interest statute to restore integrity to the system included the statements that:

Four of the seven members of a private inspection agency's Board of Directors were officials of the grain companies, three of which were served by the inspection agency. Six of the seven members of the Board of Trade and Inspections Committee would set inspection fees, approve the hiring and handling of labor negotiations for the inspection agency, and they were also officials or employees of grain firms served by the agency.

The USDA in its investigation found that three inspection agencies were organized with the assistance of loans from \$10,000 to \$30,000 from grain companies for whom inspections were to be conducted; and that officers or employees of foreign inspection agencies received annual bonuses of \$500 to \$6,000, supplementing their salaries.

Expenditures by inspection agencies included entertainment and gratuities for grain company personnel and USDA employees, and that some of these payments were related to the actual inspection functions.

What we are getting into is a look at how we can restore confidence in the system and integrity to the system.

At the same time, although I personally prefer a complete ban on conflicts of interest, I realize that would probably be very difficult.

The small holdings of an individual like 15 or 20 shares would not necessarily produce a conflict. Therefore, I tried to find a middle ground that would still set up a very high standard.

This is what I propose.

There are slight changes in this from the earlier draft but nothing of enormous significance.

Mr. HIGHTOWER. Mrs. Heckler, I am not sure that I understand.

Under the provisions of section (d), you disqualify anyone from performing any of the supervisory weighing functions.

Yet under section (b) (1) you include everyone who is in the merchandising business.

Would this mean that the Secretary could not appoint a farmer who owns land and raises wheat to serve also as an employee of the Department of Agriculture?

Mrs. HECKLER. I would say so.

Mr. HIGHTOWER. Out in our country a lot of people farm who work in other places in order to continue to make a living.

These people with a rural background and experience are the most logical people to work in the supervisory jobs that will be created under this act.

I think that to extend it so far as to say that a man who is a wheat farmer cannot also work for the Department of Agriculture is taking the conflict of interest—

Mrs. HECKLER. He cannot be involved in the inspection.

Mr. HIGHTOWER. But this is the kind of work we are hiring these people to do.

He is going to need a part-time job. He would be a logical employee for the Department.

But to say because he is a farmer and raises wheat he cannot be hired by the Department, I think is ridiculous.

There would really be no conflict of interest there as far as weighing is concerned.

I can understand why there might be a difference where you have a question in grading, because that is a judgmental call.

But weighing is a function that does not require the judgmental things that a conflict of interest might prejudice.

I think that this is entirely too severe.

I am not too sure how we ought to modify it so that it would not be that severe, but to carry it that far, I think is ridiculous.

The CHAIRMAN. Does the gentlelady intend that the USDA be considered an official inspection agency?

Mrs. HECKLER. No.

They would have the supervisory function which we have put into the law.

The CHAIRMAN. The committee print gives the Secretary the responsibility of conducting export inspection through the use of USDA employees or delegated State employees.

Does that affect your amendment?

Mrs. HECKLER. No.

The CHAIRMAN. Do you intend that the State governments be considered as inspection agency within the meaning of your amendment?

Mrs. HECKLER. The Federal agency, of course, would have supervisory responsibility.

The State agency would be involved in the actual business of doing the weighing.

The CHAIRMAN. As I see it, in the committee print the USDA would be conducting official inspection at export ports.

What I wish to know is whether USDA employees are not included under the act for any reason and consequently, if they could, in effect own stock even though they are directly involved in the inspection process. In the case of a State, an employee of the Department of Aeronautics of the State of Massachusetts, for example, has nothing

to do with the inspection of grain, and he might be related to the Governor of Massachusetts.

Mrs. HECKLER. I feel that I have no intent to set up a double standard so obviously those who are supervising would have the same standard as those States which are involved in the same process or in the actual weighing.

Your question was, "Did I think that the Federal Government was actually the inspection agency?"

I do not see them in that role, but I feel the same standard should be required of their employees that we would require of the State employees or any other employees of the inspection agency.

Mr. KELLY. Will the gentleman from Texas yield?

Mr. HIGHTOWER. Yes.

Mr. KELLY. I would like to ask counsel this: Is there not a general code provision for conflict of interest that applies to all government employees?

Mr. HOGAN. Judge Kelly, this was drafted under the concept that Federal employees were covered by other general Federal laws and that what this was designed to do was to catch those designated agencies, those inspection agencies as defined in the act, whose employees are non-Federal employees, officers et cetera.

Mr. KELLY. Other than Federal officers?

Mr. HOGAN. Yes.

They would be covered by the provisions of the existing Federal law.

I would have to ask the departmental officials to refer to the specific provisions of title 5 of the United States Code which normally relates to the prohibition of Federal officials from involving themselves in any conflict of interest.

What we have to try to do in this section is to cover—because it is an unusual feature of the bill as drafted up to this point—those individuals in State governments operating under a delegation of authority.

Mr. KELLY. State officers?

Mr. HOGAN. Yes; those State officers who are going to be performing delegated inspection or supervisory weighing function.

Mr. KELLY. I believe I got an answer to my question.

I would like to ask Mrs. Heckler something else, if the gentleman will yield further: Don't you think that the situation is more than adequately covered because the Federal Government does the inspection? The general law is going to apply. The Secretary of Agriculture has the discretion to permit State agencies to inspect and weigh. The Secretary may impose such regulations as he cares to.

Certainly we expect that the Secretary is going to do that which ought to be done. Because the conflict of interest is obviously a problem, I think it will be done.

What we want to try to do is to avoid piling law upon law upon law, all doing the same thing.

It would seem to me that the matter is already adequately covered. I ask you to respond, Mrs. Heckler.

Mrs. HECKLER. Which matter is already covered?

Mr. KELLY. The matter of conflict of interest.

Mrs. HECKLER. In the whole bill?

Mr. KELLY. The whole matter of conflict of interest for weighing and inspection will already be covered in the law by the general provisions covering Federal employees and by the delegation of authority by the Secretary of Agriculture otherwise.

Mrs. HECKLER. I think that the delegation of the Secretary is a very extensive one. I think we are dealing with the question of how we are going to cleanse the system of its weaknesses—a system which has been eroded by enormous scandals.

We are dealing not only with actual conflicts but appearance of conflicts to the world.

Our sales have been definitely diminished as a result of the lack of confidence in the integrity of the American system. We have to relate to this problem in this legislation.

It seems to me that setting a standard, which shows that we are going to restore confidence in the system and that we are going to set a high standard of integrity so that foreign purchasers can rely on the quality and quantity and all characteristics of the commodities that we sell, is important and should not be relegated to the discretion of the Secretary. That will be considered in the eyes of those who look at this legislation as an absence of responsibility and a failure to set a high standard in the law itself.

It will show an absence of will on the part of the Congress to clean up the mess that has occurred in this particular area.

Mr. THONE. Will the gentlelady yield?

Mrs. HECKLER. Yes.

Mr. THONE. This conflict-of-interest section has bothered many of us on this committee.

In line with what you just said, has there been any scandal?

Have there been any indictments?

Have there been any other official uncoverings of wrongdoing at the interior points as far as this conflict-of-interest question is concerned?

Mrs. HECKLER. I am certainly not aware of any new disclosures.

Mr. THONE. Any disclosures? New or old.

Mrs. HECKLER. Obviously the cases which we have seen before the courts have involved conflicts and activities at the export ports.

Mr. THONE. Thank you.

Mrs. HECKLER. At the same time if you are going to clean up the system, you have to take a look at the whole system and realize the significance of the appearance of being as clean as a hound's tooth in the eyes of the world. That's what we're talking about.

The CHAIRMAN. I recognize Mr. de la Garza.

Mr. DE LA GARZA. I would like to ask the gentlelady if in lieu of the adoption of the Foley amendment—how does your amendment fit into the Foley amendment?

Mrs. HECKLER. You mean the State inspection agency?

Mr. DE LA GARZA. Yes.

Mrs. HECKLER. That would be included in subsection (d) of my amendment which brings the State inspection agency under the same standard that the act sets up for private inspectors and others.

Mr. DE LA GARZA. Do you still insist in your amendment that private inspection agencies—or how do you call them?

Mr. HOGAN. Mr. Chairman, I may be able to clarify this.

Section 11 of the existing Grain Standards Act prohibits the individuals actually performing the inspection function from having a conflict of interest. Those who are actually inspecting are either licensed or authorized by the Secretary to perform inspection.

They have a conflict-of-interest requirement imposed on them now.

What has not been covered to date are the inspection agencies, their members, directors, officers, or other employees who do not actually conduct the inspections, those who do not actually perform the task of sampling of grain.

Mrs. Heckler's amendment (b) (1) would cover that portion of the inspection which is not now covered under section 11.

As the Heckler amendment is drafted, it is believed, by reason of the way that the official inspection agency is defined in the act, and the way that the new Federal-State relationship is established where the Secretary delegates to the State the authority to inspect via the Foley amendment: That subsection (b) of Mrs. Heckler's amendment would cover those individuals involved in grain inspection under the Foley amendment.

Because there is no definition of official weighing agencies in the act, it is believed that subsection (d) would have to be added if you wanted to cover those State employees who would be either authorized or licensed or whatever the Secretary in his discretion decided to do to cover those individuals who were going to supervise the weighing function under the Foley amendment as it was adopted yesterday.

That is covered in subsection (d) of Mrs. Heckler's amendment.

As it relates to the substantial stockholder interest on page 2 of her amendment, that only helps to define what is included in the subsection (b) (1) as to what would constitute a conflict of interest with respect to substantial stockholders.

Mr. DE LA GARZA. Maybe I misunderstand the Foley amendment, but this amendment says: "In any corporate official inspection agency."

You are not going to have an incorporated official inspection agency with a financial interest or stockholders are you, if you go from the Secretary of the State only?

Mr. HOGAN. There will not be any stock relationship. No.

Under the Foley amendment, the Federal-State relationship will have the State standing, as it were, in the shoes of the Federal Government performing for them a delegated function.

As we view it, that relationship would come under the definition which has been included in this bill of what constitutes an official inspection agency.

Those people are covered under subsection (b) (1).

The CHAIRMAN. Perhaps I don't understand the gentleman's question, but I think he is referring to private inspection agencies or corporate inspection agencies.

The committee print provides that for inspection of grain at inland points these entities may be officially designated by the Secretary.

At the export ports by contract it would only be the Federal employee or the State employee acting under authority of the Secretary.

Mr. DE LA GARZA. Thank you.

Mr. BERGLAND. Mr. Chairman, I have an amendment to the amendment offered by the lady from Massachusetts.

While it is being distributed, I might briefly explain what this would do.

It would add a new paragraph 3 to her amendment.

It would authorize the Secretary to provide an exemption from the conflict-of-interest provisions of her proposal to governmental agencies, boards of trade, chambers of commerce, and grain exchanges if he determines whatever conflict of interest may exist is not such as to jeopardize the integrity or the effective or objective operation of the service performed.

This would allow the Secretary to franchise the grain exchange or a board of trade which I think many of us believe are inherently self-cleansing and where there is no chance for a conflict of interest to in any way destroy the effectiveness of this act.

The second provision of my amendment would clarify a provision in Mrs. Heckler's proposal which has troubled the gentleman from Washington, the distinguished chairman of this committee, and others.

It reads:

No business or governmental entity conducting any such business or any member, director, officer, or employee thereof or no other business or governmental entity related to such entity shall operate or be employed by or directly or indirectly have any stock or financial interest in any official agency.

The problem I think inherent in that proposition is that if an employee of the State of Minnesota which is in the inspecting business owns stock in a grain elevator company, then even though that employee may be working for the State department of corrections the State itself would not be authorized to undertake an inspection program.

The second part of my amendment is very simple. It simply authorizes the Secretary to determine whether or not there is a conflict in governmental agencies and reads:

If a State or local governmental agency is designated as an official inspection agency; the Secretary shall specify the officials and other personnel of the State or local government to which the conflict of interest provisions of this subsection (b) apply.

In other words, the Secretary obviously would not allow a State employee who is engaged in the inspecting business to own stock in a grain elevator company but could allow the State to inspect grain if an employee of the State other than those directly involved in this function did own stock in a grain elevator company.

I think it tends to clarify the intent of the lady's amendment.

Mr. THONE. Will the gentleman yield?

Mr. BERGLAND. Yes.

Mr. THONE. I strongly support the Bergland amendment.

I think we must concede that there are some conflict problems here which we are not going to resolve—if not direct conflict problems, then at least the appearance of conflict. In the law it is just as bad.

However, I think if you study this procedure very carefully—I don't know that I have, but I've talked to people who have—then you have an area here where this exception is in order.

Even the GAO report, Mrs. Heckler, refers to the fact that the total legislative history of the Grain Standards Act recognizes the fact that you do have some conflict areas where you have a self-cleansing operation.

Keep in mind that the buyer here always has the right of Federal appeal. That is not available in the export situation.

So you have some checks and balances here which are not available in other areas.

You could always inspect the grain at the destination. The customers would not tolerate any "Mickey Mousing" around here.

At some length I visited with the distinguished gentleman from Iowa, Mr. Bedell, about the Sioux City Grain Exchange, which has never had a complaint from producers that I know of.

In fact they like the service there for many reasons, No. 1 of which is that it is economical to them.

If you throw this completely in the Government orbit, they feel that you will have to pay for a lot more service than they want or need in order to protect their interests.

For these and many other reasons I strongly support Mr. Bergland's amendment. I think it is very necessary here.

The CHAIRMAN. The gentleman's time has expired. I recognize the gentleman from Kansas, Mr. Sebelius.

Mr. SEBELIUS. I would like to ask Mr. Bergland if he feels his amendment covers the farmer working as an inspector for a State system?

I have the organizational chart of the State of Kansas.

We have 193 permanent positions and 67 seasonal or temporary positions.

I know full well that about one-half of those are farmers of grain and livestock on the side.

That is where they got the background.

I certainly do not want a conflict of interest which would prohibit a farmer from working for a State agency for that purpose.

Mr. BALDUS. Will the gentleman yield?

I was interested in the comment raised by Mr. Hightower.

On the 11th line down on paragraph (b)(1), if a person inserted the word "commercial transportation, storing and merchandising or other" and insert "commercial handling of grain" it would seem to me that that might do the thing that Mr. Hightower is interested in and might take care of the thing that you are interested in.

Mr. SEBELIUS. I would like to exclude it.

On its face that would be a conflict of interest that would never take place.

But to be engaged in the system as an employee of one of these agencies and who is farming on the side, we would see that half of them do have it.

Mr. BALDUS. It would be my intention to define that as an agricultural interest versus a commercial interest, if it is legally sound.

Mrs. HECKLER. Will the gentleman yield.

Mr. SEBELIUS. Yes.

Mrs. HECKLER. I certainly never intended to include the small farmer, the individual operator. However, there are farmers and there are farmers.

When you have farmers who are producing substantial quantities of the same grain that are going to be inspected that really poses a very serious question.

Mr. SEBELIUS. I would think very definitely that there would be a problem. As an employee, he would not be inspecting his own grain.

Mrs. HECKLER. How would you segregate the grain?

Mr. SEBELIUS. Unless you are shipping it to a terminal as in Kansas City to be stored in a warehouse there, then that would be the only chance you would have to get your grain there.

I don't see that as a conflict. He would not be doing that.

Mr. KELLY. Will the gentleman yield?

Mr. SEBELIUS. Yes.

Mr. KELLY. Mr. Chairman, I would like to inquire of counsel if the amendment suggested by Mrs. Heckler and the amendment to that amendment expand the scope of this bill into interior weighing and inspection. And by the wording of it, as opposed to just dealing with weighing and inspection at export ports.

Mr. SEBELIUS. Mr. Chairman, I will not buy any of it. I have seen it happen. I mentioned this 3 days ago. The Department of Labor is trying to do this. They are trying to put themselves in the act so they will have the migrant worker provision.

When the USDA gets through here with the conflict of interest, then the farmer would not be entitled to work for anybody.

Until we get a system where the farmer can make a decent living and with the price of land what it is, then I certainly don't want to keep him from having this type of employment.

Mr. KELLY. Mr. Chairman, I have a substitute.

The CHAIRMAN. The gentleman from Florida is recognized.

Mr. KELLY. Mr. Chairman, I do not have this in writing, but the substitute is so simple that perhaps by unanimous consent the written form can be waived.

My suggestion is that the Foley amendment, which was adopted yesterday, be amended by inserting after the word "prescribed" in the fourth line from the bottom, the language to include "appropriate regulations regarding conflict of interest."

The committee bill will then read that the State agency to perform such supervision at export locations subject to such rules and regulations and instructions as may be prescribed and then to add the language: "to include appropriate regulations with regard to conflict of interest."

The Federal officers would be covered by the existing law, and the State by appropriate regulations regarding conflict of interest which would be imposed by the Secretary of Agriculture, along with the other rules and regulations as prescribed.

That way we would not extend the scope of this bill, and it would cover the conflict of interest question adequately.

Mrs. HECKLER. Will the gentleman yield?

Mr. KELLY. Yes.

Mrs. HECKLER. I would like the gentleman to know that the proposal I have made has come as a result of consultation with the GAO and much more precisely consultation with the Department of Agriculture who suggest the very wording I have proposed. I think you can expect that what the Secretary will go back to will be what we are asked to vote on here which has been very much their suggestion.

Mr. KELLY. All right.

But we will save about a half million dollars on paper if we do it this way.

Mrs. HECKLER. I think we will negate our own responsibility if we do it this way and turn everything over to the discretion of the Secretary.

We will have refused the opportunity given this committee to cleanse the system and to take our congressional responsibility seriously as the GAO and the Department itself ask us to do, which is to set out standards which are reasonable for the world to see.

The world is involved here.

I have tremendous sympathy for the little farmer. If we could find a way to define his interests so that the little guy would not be prohibited from having a share and at the same time protect the system from the really big operators who are the major factors here, then I would certainly be amenable to that.

Mr. BEDELL. Will the gentleman yield?

Mr. KELLY. Yes.

Mr. BEDELL. In trying to accomplish what the gentleman wishes to accomplish, it would be my opinion that the passage of this amendment with the Bergland amendment thereto would accomplish more of what the judge would like to see than without it, in view of the fact that there are a large number of boards of trade and grain exchanges and this sort of thing at interior points who now appear to be doing a good job, and who are serving without additional taxpayer cost and helping the public which, I believe, is the interest of Mr. Kelly.

The passage of this would enable us to continue; whereas, without the passage of this amendment, there's a very good chance it would not.

Mr. KELLY. Mr. Chairman, I would like to put this question to the Chair if I may.

As I understand the bill, it goes to the weighing and inspection of grain at export points only. Is that the situation?

The CHAIRMAN. No.

The bill deals with two sectors of inspection—that which occurs at export ports only and that which is performed at inland points.

At export ports there can be no private agencies involved in the inspection of grain.

Instead, all inspection would have to be conducted by the Secretary using departmental employees or State employees under a delegation of authority.

At the inland points, as currently specified in the committee print, the Secretary could offer original inspection with USDA employees, or he could designate State and local government employees or private inspectors.

The gentleman's substitute, as I understand it, would focus on the conflict-of-interest problem as it affects export inspection, by relying on the existing conflict-of-interest laws in Federal statutes to cover the Federal employees and, further, by relying on the Secretary's instructions to cover delegated State employees.

That leaves the question open as to what conflict of interest standards would be imposed at inland points if the Secretary designated private or local government agencies to conduct inspection there.

I think the gentleman has a little time left.

If he would yield further, I would say this.

The print on page 10 reads :

No official inspection agency or any member, officer, employee, or stockholder thereof shall have such a conflict of interest, either directly or indirectly, in any business involving the transportation, storage, merchandising, or other handling of grain or use of official inspection service as to jeopardize the integrity or the effective and objective operation of the inspection service performed by such agency.

The enforcing mechanism is that if the Secretary finds that contrary to the provision, such is the case, he is not supposed to designate that agency as an official inspection service.

Mr. HIGHTOWER. Mr. Chairman?

The CHAIRMAN. Mr. Hightower.

Mr. HIGHTOWER. I like very much the wording of the committee print.

I see that it does not seem to add the extra burden on the inspection agency to be sure that it is policing itself.

Perhaps we might consider, instead of the amendment that Mrs. Heckler has offered, amending the present committee print by adding language perhaps similar to this :

That is, that each official inspection agency shall certify annually to the Secretary of Agriculture that no conflict of interest has existed at any time during the previous year on the part of any officer, employee or stockholder thereof.

That would keep the burden constantly there on the part of these people within the agencies to be sure that they were policing themselves which is really the most effective kind of policing we could have.

The CHAIRMAN. If the gentleman will yield?

I would think that the Secretary would be implicitly empowered to require any and all reasonable information from or certification of any official inspection agency with regard to conflicts of interest inasmuch as he establishes the conditions under which these agencies may receive a designation.

I would not want to imply by adding that language that that is the only thing the Secretary can do.

Under this language I think he can ask for information regarding employment, stockholder interest, or whatever he needs to make a determination on conflict of interest.

Mr. HIGHTOWER. I was only suggesting that this might put the thing in a little better light as far as the members of the committee were concerned. That is, to put it in the statute that that was really the responsibility of the Secretary.

The CHAIRMAN. If the gentleman will yield, it seems to me that we must make a policy decision. Apparently Mrs. Heckler feels that Federal employees are covered by existing conflict of interest statutes.

Although I thought I was experienced at reading legal texts, I confess that I am somewhat confused by the language of the Department's draft for Mrs. Heckler's amendment.

Perhaps my confusion arises from the use of the word "business." It is not clear whether it refers to a special inspection agency business; the business of storing, transporting, and handling of grain; or whatever.

My concern is that any inspection agency operated by a State would be prevented from conducting inspections if any employee or officer of the State held any interest in the storage, transportation, or merchandising of grain.

Yet, it seems to me that that was the interpretation of this language.

If that is so, it would not be possible for States to conduct inspection inasmuch as most States have employees involved in the storage of grains simply because farmers generally store their own grain.

There is no exemption here for proprietors.

If it means that a State cannot have a direct interest in that business, then you have the problem of States that own farms, usually in connection with their penal systems where they might farm grains on State-owned lands.

It seems to me essential that the secretary be allowed the flexibility to grant some exemptions in cases where it becomes clear that the law was not intended to cover certain categories of individuals. Otherwise I think we will be trapped by a complex language pattern leading to points none of us would want to reach.

Mrs. HECKLER. Will the gentleman yield?

The CHAIRMAN. Mr. Hightower has the time and I recognize him for a couple of minutes.

Mr. HIGHTOWER. I yield to Mr. Bedell.

Mr. BEDELL. I yield to Mrs. Heckler.

Mrs. HECKLER. I think the provision of the Bergland amendment addresses that point well. The purpose of my amendment was to include, inasmuch as we have given the State agencies new authority, to include them to again set one standard for all.

But the Bergland amendment, which I support, reaches the problem at inland points and boards of trade which have a unique situation. That situation would be presented to the Secretary, and he would then rule on the potential conflict.

In the case of the Bergland amendment, it deals with the State or local governmental agencies and allows the Secretary to set standards which would be appropriate for them.

I think we are allowing the Secretary enough discretion to deal with the inland situation which has not had the same problems that we have had at export points, while we also maintain a high standard throughout the system.

Mr. BEDELL. Mr. Chairman, first of all—Mr. Kelly, I think the committee needs to address a problem here which we are not really properly addressing.

The Department of Agriculture has already issued regulations in the Federal Register which have to do with conflict of interest which would, in effect, put out of business the grain exchanges, the boards of trade, the chambers of commerce, at inland points who at this time, I believe, are doing a good job of inspecting grain.

It is to the benefit of the taxpayers, and I think they should be permitted to continue.

I talked to the USDA and they told me that they would withhold the implementation of those rules until the committee had had an opportunity to act so that they would know the wishes of the committee.

It appears to me that the Heckler amendment, together with the Bergland amendment, does address that problem. What it does say is that: "We believe those grain exchanges should be able to continue under the conflict-of-interest clause that would be proposed."

I believe it would be the desire of what you wish to see accomplished—that is, to see us give that message to the Department.

Mr. KELLY. May I respond to that?

Here's the problem.

When we, from this platform, attempt to design an overall conflict-of-interest provision, then we are going to create an instrument that is too rigid.

I think we have clearly indicated that it is the intent of this committee and of Congress that the inspection at internal points will continue to be conducted by accepted agencies. We tell them to include appropriate regulations regarding conflict of interest.

It would certainly follow that they would have to establish regulations which would permit them to exist.

They would be adequate to the circumstances of each individual situation, area, and agency involved.

That gives the flexibility.

If you cannot trust the Department of Agriculture with regard to this, then you cannot trust them with regard to anything.

Mr. BEDELL. I don't think it's a question of trusting the Department of Agriculture.

I think rightfully they have a reason to look to us for some guidance. The guidance we would be giving, as I see it, would be for them to be more lenient at the interior points in permitting grain exchanges and those types of operations to continue to exist.

I would think this would be the type of thing that you would like to see.

It is "certainly what I would like to see in terms of helping to hold down the taxpayers' cost.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. If the Chair deems it appropriate, I would now move the previous question on the Kelly substitute.

Mr. BERGLAND. Would the gentleman withhold the request pending a clarification?

Mr. FITHIAN. Yes.

The CHAIRMAN. The Kelly substitute would not be in order. The first question would occur on the Heckler amendment. Then after all amendments to the Heckler amendment, we would vote on the Kelly substitute.

Mr. FITHIAN. Thank you, Mr. Chairman.

Mr. BERGLAND. If I might have the attention of counsel, John Hogan, let me say this.

Mr. Chairman, the amendment which I have offered to the Heckler amendment was drafted 2 days ago. Since then the committee has changed the Foley proposal which has been agreed to.

I am not sure about the wording on the second paragraph as to whether it conforms to the bill as amended by the gentleman from Washington.

Do we have a technical problem here?

Mr. HOGAN. Mr. Bergland, what you have covered now is the designated agency of the State such as your own State of Minnesota, which is now a designated agency.

If they go into a delegated-authority relationship with the Federal Government under the authority exercised by the Secretary under section 3 for inspection on section 8 for weighing, then I think you want to exclude them from the provisions of this as you have added it to your amendment.

If you give us the general authority to incorporate that, then the members as they vote on this will have the understanding that the two Foley amendments—the one having the inspection arrangement between Federal and State government and the weighing arrangement between the Federal and State government—would be included within the exemption of your amendment and that that would cover the situation.

Mr. BERGLAND. Mr. Chairman, I would ask unanimous consent that counsel be authorized to perfect the amendment in that regard. I am not sure of the wording, but I think we have an understanding.

The CHAIRMAN. I wonder if counsel would suggest possible language.

The bill provides for the delegation of authority to States to perform Federal export inspections as well as for the designation of official inspection agencies at interior points.

I had the impression that the gentleman was going to put what appears as the second paragraph at the top.

Mr. BERGLAND. It is on my copy but apparently—

The CHAIRMAN. Is it clear to everybody that Mr. Bergland's amendment begins:

"If a State or local governmental agency," et cetera, rather than "Notwithstanding."

If a State is delegated to perform export inspection or if a State or local agency is designated to be an official inspection agency for inland inspection, then the Secretary "shall specify the officials of the State or local government or all the personnel to which the conflict of interest provisions would apply."

In other words, the conflict of interest provision applies to certain people such as the director and supervisor, et cetera, but not necessarily to the warden at the State penitentiary.

Then it goes on to explain that notwithstanding even that provision, if a technical conflict of interest exists, the Secretary could determine that those State or local agencies or boards of trade would still be able to perform official inspection if the conflict of interest did not compromise or jeopardize the integrity of the inspection process.

Is that the gentleman's idea?

Mr. BERGLAND. That is the point precisely.

I would ask unanimous consent that the amendment be adjusted to incorporate, if not the precise language of the gentleman from Washington, at least the intent.

The CHAIRMAN. Does counsel have any comment on that?

Mr. BOR. I think the Chairman's language would aptly take care of this. We can incorporate the language in the amendment.

I have another matter which I would like to ask unanimous consent for if I might.

It is a technical matter.

Mr. HIGHTOWER. May I ask a technical question here?

In regard to the Bergland amendment as it now is printed, "Notwithstanding the foregoing provision," et cetera; I wonder if that possibly would go in the subsection if we're going to make all of this apply as we have discussed it here?

Mr. BOR. The subsection (b) of the Heckler amendment is a subsection to another section.

So these are various paragraphs which apply all under one subsection, which is subsection (b).

Mr. HIGHTOWER. This would apply to the entire Heckler amendment?

Mr. BOR. Yes. And not merely to this one paragraph in which it appears.

Mr. HIGHTOWER. Thank you.

The CHAIRMAN. Does counsel have another comment?

Mr. BOR. A part of the weighing provision which was agreed to by the committee yesterday gave the Secretary at export port locations the authority, if he felt it necessary, to designate State agencies or other persons to perform weighing and testing of scales at the export port locations.

It set up certain standards which would have to be met in order to obtain a designation. One of those standards was that they had to comport with the conflict of interest provisions of this section.

As a technical matter, I would think that the amendment of the gentlelady from Massachusetts perhaps ought to refer also to the State agencies and private firms, which would be performing those weighing functions.

The cross-reference would tie in a little more accurately.

The CHAIRMAN. Is there any objection to the staff's being authorized to conform the conflict of interest provisions in the weighing section to those for inspection rather than attempting to draft them here?

Are there any amendments to the Kelly substitute?

If not, is there any objection to ordering the previous question on the Bergland amendment to the Heckler amendment?

Hearing none, the previous question is ordered.

All those in favor of the Bergland amendment to the Heckler amendment will raise their right hand.

At this point the Chair will announce that there were 23 ayes and no nays.

The amendment of Mr. Bergland is agreed to.

At this juncture other amendments to the Heckler amendment are in order as are amendments to the Kelly substitute.

If no additional discussion is offered, we will proceed to vote—

Mr. THONE. Mr. Chairman, will you restate the Kelly substitute, please?

Mr. BALDUS. I would like to offer my amendment to the Heckler amendment.

The CHAIRMAN. Mr. Thone, would you object to withholding your request for a moment while I recognize Mr. Baldus?

Mr. THONE. No; I will withhold it.

The CHAIRMAN. I recognize Mr. Baldus.

Mr. BALDUS. I mentioned this before. Mr. Chairman. I don't have real strong feelings about it, but I think it may address the problem of Mr. Hightower and Mr. Sebelius; although it may not be perfect.

It seems to me that it will clarify somewhat.

On the front page of the Heckler amendment, line 11 would then read, "or business involving the 'commercial' transportation, storage, merchandising, or other" and I would insert "commercial handling of grain."

I think that it is pretty plain without explanation.

I yield back the balance of my time.

The CHAIRMAN. If there is no further discussion, the question will occur on the Baldus amendment to the Heckler amendment.

All in favor, raise your right hands.

Those opposed?

The CLERK. Twenty to one.

The CHAIRMAN. There being 20 ayes and 1 nay, the amendment is agreed to.

Are there other amendments either to the Kelly substitute or to the Heckler amendment?

If not, Judge Kelly, would you like to restate your substitute?

Mr. KELLY. Yes.

On the handout from yesterday, which is entitled "amendment by Mr. Foley," dealing with option No. 3, in the fourth line from the bottom, the line starts out "instructions as he may prescribe."

After the word "prescribe," would be included the language "to include appropriate regulations regarding conflict of interest."

Mr. THONE. Will the gentleman yield?

Mr. KELLY. Yes.

Mr. THONE. I have before me the Grain Standards Act.

Of course, you have a section eleven in that act that has been in there since 1960.

Very appropriately it gives the Secretary all of the authority that he needs in order to promulgate rules and regulations on conflict of interest.

As a matter of fact, that is the authority that Under Secretary Knebel used when he promulgated those rules and regs on February 12. I think that they are having hearings downtown on that, Judge Kelly.

Mr. KELLY. May I respond to that?

The CHAIRMAN. Yes.

Mr. KELLY. The answer to that is that I quite agree.

I think that we are loaded with law—we are just not enforcing it.

What I am trying to do with this substitute is minimize that.

We have just read two more pages of law which I think is already covered.

Mr. THONE. Will the gentleman yield?

Mr. KELLY. I am trying to make it short, and I will yield.

Mr. THONE. With that fine judicial mind of yours, you probably know full well that the Bergland amendment takes care of this.

Granted that the Heckler amendment broadens what is currently in the act, but the Bergland amendment does exactly what the Judge wants to do philosophically.

Mr. KELLY. Yes; and it takes two pages to do it.

Mr. THONE. Two pages, or six—I think that it is necessary, Judge Kelly.

The CHAIRMAN. Is that section 11 of the act a conflict of interest statute?

Mr. THONE. It is.

The CHAIRMAN. I want to make it clear what we are doing.

As I understand it, we are adding to this language.

Mr. KELLY. Mr. Chairman, would you designate to where you were referring?

The CHAIRMAN. On page 10, line 3 of the committee print, it says: "SEC. 4. Section 11 of said Act" which is the Grain Inspection Act "is amended by designating the provisions thereof as subsection (a) and adding a new subsection (b)" which follows on line 7 through line 13.

As I understand it, the so-called Kelly substitute is a substitute for the Heckler amendment as amended; and either the Heckler amendment, as amended, or the Kelly substitute would become additional language to that contained on page 10, line three through 13.

Mr. THONE. If the chairman would yield, as the Judge indicates, there is just no need at all for the Kelly substitute.

It would be totally repetitious.

The CHAIRMAN. I think that the Judge's argument is that it is less repetitious than the Heckler amendment.

Mr. THONE. This is not true.

Mr. KELLY. Will the gentleman yield?

Mr. THONE. Yes.

Mr. KELLY. If we have to do something, then let's make it brief.

Mrs. HECKLER. There is a great appeal for brevity, but don't forget that so many provisions of law are stricken for vagueness and that what we do have is a vague standard in the committee print.

So, we are much better off by really defining the standard, especially in a situation in which we have the grain scandals threatening U.S. sales abroad.

I think that this jeopardizes the entire economy as well as the farmer's livelihood.

Mr. Chairman, I am confused about your recitation of the sequence of provisions in this section on page 10 of the committee print.

If I understood you correctly, you felt that the committee print language would be followed by my language.

The CHAIRMAN. No.

I am sorry; I misstated it.

As I understand your amendment, it would leave the Grain Standards Act provisions intact and strike section (b) of the committee print and substitute in its place the language of your amendment as amended.

Mrs. HECKLER. Right.

I understood that you said that it would be added to it and would be in substitution for the setting of a precise standard that I think is reasonable for vague language that is open to many interpretations and which the Secretary of Agriculture has already specified in a way that is far more strict than this committee is presently doing.

The CHAIRMAN. If there is no further discussion, the question occurs now on the Kelly substitute for the Heckler amendment, as amended.

All those in favor of the Kelly substitute, will raise their right hand.

The CLERK. Three.

The CHAIRMAN. Those opposed?

The CLERK. Sixteen.

The CHAIRMAN. There being 3 ayes and 16 nays, the Kelly substitute is not agreed to.

The question now occurs on the Heckler amendment as amended. All in favor of it, as amended, will raise their right hand.

The CLERK. Seventeen.

The CHAIRMAN. Opposed?

The CLERK. Four.

The CHAIRMAN. There being 17 ayes and 4 nays, the Heckler amendment is agreed to.

We have other provisions of the bill to discuss and a little time left.

Before I recognize members, I would like to have the staff indicate what the remaining issues are.

Mr. BOR. One of the provisions to which the committee's attention needs to be addressed is the registration requirements which are set out in the committee print.

These appear on page 15 of the committee print and continue on through page 19.

Essentially what this does is to require grain merchandising firms to register with the Secretary of Agriculture with some exceptions.

It provides that in order to engage in the business of merchandising grain, they have to be registered. Their registration could be suspended or revoked if there are violations of the provisions of the act.

There are other sections of this act which also penalize firms which are engaged in grain merchandising and which have committed violations of the act.

One of those provisions is the section that comes immediately after—dealing with the refusal of official inspection and also the provision for civil penalties.

The CHAIRMAN. I think that these two are separable issues.

Mr. BOR. Yes, they are.

The CHAIRMAN. Without objection, perhaps we ought to take up this question.

If I may state it from the Chair's point of view, this is a policy question involving whether or not the committee wishes to set up a system for the registration of firms engaged in the business of buying grain for sale in interstate or foreign commerce.

I might add that it represents a rather significant departure from the present state of the law since there is no present registration requirement, as such, for firms doing business in interstate or foreign commerce.

I personally wonder whether this section is really needed in the act or whether it would only complicate the problem.

Mr. POAGE. Mr. Chairman, this runs counter to everything that the public wants.

I think some of the newspapers and some of the people who are agitating this thing want it, but it runs counter to what a great majority of the people want.

This goes so far as to describe in detail the forms that you are going to fill out and how you are going to tell where you live and those sorts of things.

All of this will be of convenience to the Department. They will have all of that on file.

That is the way that we have built up all of these forms.

The President now talks about how he is going to get rid of all of these forms.

He will be lucky if he gets away with getting rid of two.

I wish him well in that.

We propose establishing another layer of that here.

Certainly it would be a convenience to somebody. It will mean a good many jobs. It will make the entire thing look important, probably.

But when we get through, we will not have accomplished anything more than we have in 1,500 other activities of the Federal Government where we require the filling in of forms and the filing of data which you must always have available because you might want to arrest some of these people and the sheriff would not be able to find them.

So, you have them file all of these things.

I think that we could certainly do without that. If we are serious about trying to cut down on the Government expense, then this is certainly nonessential. I just hope that we will leave it out.

Mr. BERGLAND. Mr. Chairman?

The CHAIRMAN. I recognize Mr. Bergland.

Mr. BERGLAND. On page 17, line 5 we have what, in my judgment, is a fishing expedition. I think it ought to be knocked out.

It reads: "(F) such other information as the Secretary deems necessary to carry out the purposes of this Act."

I mean he could just terrorize these people to death, and I don't see that that serves any purpose.

Mr. THONE. Mr. Bergland, would you yield?

Mr. BERGLAND. Sure.

Mr. THONE. Do you know where this section came from?

The CHAIRMAN. It was one of the Department's recommendations, I believe; is that correct?

Mr. BOR. This was not in the Department's recommendations which were submitted to the committee, but it was a provision in Senate Joint Resolution 88.

The CHAIRMAN. I apologize to the Department of Agriculture.

Mr. BOR. It was also in the bill that I think was introduced by Congressman Smith.

The CHAIRMAN. Is it in the present Senate draft?

Mr. BOR. It is not in the bill that was most recently introduced in the Senate which is under consideration by the Senate committee.

Mr. THONE. I would move then to bring the matter to issue that all of section 18 be stricken.

Mr. BERGLAND. I don't know who has the time——

Mr. THONE. I would like to strike all of section 9—the registration requirements.

The CHAIRMAN. The gentleman from Minnesota has the time.

Mr. BERGLAND. I would like to address a question to counsel or to the Department.

Under current law there is no authority to register an elevator unless they happen to be under the Warehouse Act. And that is only a fraction of the numbers doing business.

If a person who is in the grain business and who is not operating under the Warehouse Act is found guilty of violations of the Grain Standards Act, the only control that you have is to increase the supervision of that warehouse. You have no authority to put them out of business. If there are repeated violations, there is nothing you can do. If you know they are a bunch of thieves, all that you can do is to watch them closely.

Mr. BOR. Mr. Bergland, there is something to consider in this context.

The act now provides that the Secretary can refuse official inspection to firms which have been found guilty of violations of the act.

If a court has found a grain elevator to have committed a violation of the act, then official inspection can be refused to this elevator.

The committee print would go further. It would allow official inspection to be withheld if there has been a violation committed and if the Department, through its administrative hearing process, had determined that there was a violation committed by the elevator without the need for a court to make this kind of determination.

Mr. BERGLAND. As you read this section in the committee print, what if an employee of a grain firm is found guilty of violating the Grain Standards Act? He is not a director; he is not a vice president—he is the second assistant scale operator in a warehouse someplace.

As you read this, would that be sufficient reason to cancel that warehouse approval?

I don't think that it ought to.

Mr. BOR. You are referring to the refusal of inspection or the registration provision?

Mr. BERGLAND. The registration provision.

It is in the body of the committee print.

What I am getting at is that a grain company may have elevators operating in many States, which is usually the case. They obviously cannot—and should not, in my judgment—be held responsible for the illegal act of a junior employee.

Mr. BOR. That kind of situation would not give rise to a revocation of registration under the committee print.

Mr. BERGLAND. It would not?

Mr. BOR. No.

The CHAIRMAN. As I read the committee print, we are dealing with section 9 now. The requirements of registration would be extended to all firms that were buying grain for sale in interstate or foreign commerce or in the business of handling, weighing, or transporting grain for sale in interstate or foreign commerce.

Furthermore, it states that they could not engage in this kind of business unless they were registered. New certificates of registration would be required annually.

Section (d) on page 18 reads:

The Secretary may suspend or revoke any certificate of registration . . . after the person holding such certificate has been afforded an opportunity for a hearing, the Secretary shall determine that such person has violated any provision of the Act or of the regulations . . .

I think the word "person" here would mean a corporate person, as well as an individual person; and any acts of the employee of the person would or could be attributable to the person.

Mr. BOR. Well—

The CHAIRMAN. The acts may also have been done with the consent or connivance of the officers of the company.

The main thing to be decided here is whether or not you want to get into this type of regulation and enforcement.

The next section, if retained in the committee print, would authorize the Secretary to deny inspection services.

That is an extremely potent weapon in the case of a warehouse or any company dealing with transportation of grain where inspection is required either by contract or by export requirements.

If they were unable to have their grain inspected, they wouldn't be able to conduct business.

Mr. THONE. Mr. Chairman, I might also add that counsel now advises me that the Senate dropped out this registration requirement in the legislation.

The CHAIRMAN. The gentleman from Nebraska is recognized.

Mr. THONE. I have nothing further to say.

The CHAIRMAN. Do you want to move to strike the section?

Mr. THONE. I formally move to strike all of section 9.

The CHAIRMAN. The gentleman from Nebraska moves that section 9 on pages 15 through 19 be stricken.

Mr. THONE. Very briefly, Mr. Chairman, I think, as Mr. Poage pointed out, this is more of that unnecessary paperwork.

I think that I have expressed myself very clearly. I want a tough bill, but I don't think that this is going to get to the nitty-gritty of it at all.

It would just cause unnecessary Federal interference in an area where it should not be.

I think it will be extra paperwork without any effective results.

The CHAIRMAN. Is there any further discussion?

Mr. BALDUS. I have a question of the Chair.

Your statement about withholding inspection as a severe penalty—this is at an export port. I agree with that.

How about at an internal terminal where we would not lay on that same requirement? What would be the situation?

Let's say that it was at a place where a board of trade had been designated. Unless there were an appeal for a Federal inspection or an appeal for Federal weighing, then I really don't see what effect that would have.

In other words, the simple withholding of the Federal inspection, I don't quite understand.

If you at the same time would revoke the license—that is, the Federal weighing license—then that might have an effect.

The CHAIRMAN. The present act authorizes the withholding of inspection services. The present act, however, does not provide for any original Federal inspection. It covers only the inspection done by official inspection agencies, whether private or not, as long as they are designated.

Mr. BALDUS. Withholding would have no effect, it seems to me.

The CHAIRMAN. If you can't provide inspection at an interior point—

Mr. BALDUS. Federal?

The CHAIRMAN. It is not just original Federal inspection that might be done at export ports, but also the interior inspection that might be

done by State, local agencies, boards of trade, or private and corporate agencies designated by the Secretary as official inspection agencies at interior points.

This could be withheld.

Mr. BALDUS. You are saying that section 10 covers all of that?

The CHAIRMAN. Yes, that is correct.

I think that you will find it to be quite a severe penalty because anybody wanting to deal with that warehouse could not if the Secretary withheld inspection.

Mr. BERGLAND. I think the sanctions are here along with the necessary safeguards, and I support the amendment.

The CHAIRMAN. Without objection, the previous question is ordered on the Thone amendment.

All in favor of the Thone amendment, raise your right hand.

The CLERK. Nineteen.

The CHAIRMAN. Those opposed?

The CLERK. None.

The CHAIRMAN. There being 19 ayes and no nays, the amendment is agreed to.

I wonder if we could again ask the staff to delineate some of the areas that still need attention.

Perhaps we could first address ourselves to those issues on which we can make some progress on within the half-hour remaining.

Mr. BOR. The next section, which we have, is the one that deals with refusal of inspection and civil penalties; that is, the section that we had discussed in connection with registration.

There are a couple of issues which have been raised in the Senate bill which might be considered by the committee.

One of them is the issue of the process or procedures followed in connection with a revocation or refusal of inspection.

The way the committee print is worded, it would be refused only after a hearing had taken place in accordance with the provisions of the Administrative Procedure Act.

The Senate bill would allow temporary suspension for a period of time with a hearing following 7 days after the suspension first began.

The problem there is trying to come up with standards under which any such suspension would occur.

That is one difference.

The other difference is that the question arises as to whether or not the section should permit the Secretary to bar, for a specified period of time, the inspection service or just for that time that the Secretary finds that the firm is not operating in the proper manner.

The CHAIRMAN. Would you go on?

Mr. BOR. Another section which we have before us is section 12 on page 21 which calls for a study of contamination, transportation, and handling of grain.

On page 22 there is a section that provides for a study of the grain standards. It also deals with a revision of the standards.

On the bottom of page 22 there is a section which deals with reports of complaints concerning the inspection system and complaints received from overseas regarding the delivery of grain under the act.

Another matter that we have to consider is the problem of fees. We have to consider the issue as to what extent should the service be borne by fees and to what extent by appropriations.

I think those are probably the major issues which still remain.

The CHAIRMAN. Does the gentleman from Iowa have an amendment?

Mr. HARKIN. No, I want to ask a question.

Getting back to what we discussed a few days ago, counsel, that is, this provision on civil penalties and the lifting of inspection services.

One of the things Mr. Gallinghouse said was that he thought we ought to do, in terms of penalties that might be provided with regard to some of the large grain companies at the export terminals, would be to permit the judge to lift the license, and it would be lifted for a certain period of time.

Would this provision in here about not providing inspection services be equivalent to that type of a penalty?

Mr. BOR. Essentially it would have an effect at the port elevators because most of the grain that is exported, that is, about 90 percent of it must have official inspection.

So, if a grain firm at a port location is denied official inspection privileges, then in effect it loses out in the ability to continue operating.

Mr. HARKIN. But under this section 10, it leaves that up to the Secretary to do that.

Mr. BOR. Yes.

Mr. HARKIN. Would we not want to see that put into the provision that would allow that to be one of the criminal provisions perhaps?

The fines right now are \$3,000, \$5,000: Are those not rather small fines?

Mr. BOR. Actually, when you are considering violations, there are several different kinds of consequences that flow.

One is the refusal of official inspection.

Another is that they would be subject to civil penalties of up to \$50,000.

A third is that they would be subject to criminal penalties as provided elsewhere in the act.

Mr. HARKIN. But not one of those touches on the provision of allowing the court, that is, the judge to lift the license of one of these exporters.

Is there some reason why we cannot do that?

Mr. BOR. There is no license that is obtained from the Federal Government to operate in business unless it be a license or a permit under the United States Warehouse Act.

Mr. HARKIN. Don't you have to have a license to export?

Mr. BOR. No, you don't need a license to export.

Many of the port elevators have voluntarily asked to be registered under the United States Warehouse Act and they have received a license under that act, but there is no requirement in the law that in order to engage in the export business they must obtain a license from the Federal Government.

Mr. HARKIN. Perhaps that is what Mr. Gallinghouse was getting at.

Were there any members, who were down there with us, who remember that?

I remember him saying specifically that that is the way to hit them in the pocketbook, that is, to suspend their license for a certain period of time.

Maybe he meant just suspending the inspection services.

Mr. BOR. You get the same result by suspending or revoking their official inspection privileges.

Mr. HARKIN. Does the Secretary have that power right now? I mean, without this bill.

Mr. BOR. Without the bill, he has the authority but only if a court has found a grain firm in violation of a provision of the act. That is, only if there is court action which has been taken.

Mr. HARKIN. For example, Bunge pleaded guilty.

Could the Secretary have refused official inspection services to Bunge under this recent action that was taken?

Mr. BOR. Yes.

Mr. THONE. Will you yield, Mr. Harkin?

Mr. HARKIN. Yes.

Mr. THONE. One of the provisions that we have here is that we want full capacity down there because, as you know, they are working 7 days a week, three shifts—because of the importance of getting this grain moving.

So it is kind of self-defeating, unfortunately, to jerk one of those big outfits out of business.

There are only six of them going anyway. As was suggested some time ago, what we need is some more competition in the entire business.

But the producers and grain people cannot really afford one of those big outfits going out of business. You remember when you were down there how they were running to full capacity.

It is to our interest to have the viable export trade. We have to push everything through there that we can.

That is why we have the strong criminal penalties and why we have to have the \$50,000 fine; and these other sanctions that we have talked about—with strong law enforcement and supervision from the Department of Agriculture.

The CHAIRMAN. May the Chair point out that section 10 is very important. For that reason it may be wiser to bring this matter up for discussion on Tuesday.

If there is no objection, perhaps we could just examine page 21 where there is a relatively short paragraph, starting on line 16 and going through line 24. It simply requires a study of the contamination, transportation, and handling of U.S. agricultural products.

It seems to me that this is a rather vaguely worded mandate to the Department and involves the study of an extremely broad subject.

Since we are already asking them to report on such things as weighing at export and inland points, I wonder if this really adds enough to the bill to justify its retention.

Mr. BERGLAND. Mr. Chairman, there is a topic area which is not covered by the committee print and in which I have a considerable interest.

It may be that we ought to consider amending section 13 on the next page.

It deals with the matter of adulteration.

We have had a series of complaints, from producers particularly, about the fact that grains are produced and delivered to the local warehouse under standards prescribed by State and Federal law.

By the time the grain is delivered to a foreign miller, somehow in the process, sometimes all sorts of junk has been added.

I am not able to sit here and prescribe a remedy, but I would like to have the Department report to us on this business of adulteration.

I am not talking about commercial blending; I am not talking about the usual customary business practices—I am talking about the addition of foreign material to the grains that are handled in interstate and foreign commerce.

Maybe that can best be handled by an amendment to the next section.

The CHAIRMAN. I would think that perhaps the gentleman is right—it would be better addressed as an amendment to the next section.

Mr. THONE. Will the chairman yield?

The CHAIRMAN. Yes.

Mr. THONE. I think the gentleman from Minnesota is absolutely right. I think Mr. Bedell has an amendment on the grain standards.

I agree with you.

I would so move to strike section 12.

The CHAIRMAN. The gentleman from Nebraska moves to strike section 12.

If there is no further discussion, all those in favor of striking section 12, will signify by saying "aye," and those opposed "nay."

Opposed?

The ayes appear to have it; the ayes have it and section 12 is struck.

Perhaps at this point we can proceed with the next section dealing with the study of grain standards.

I believe that Mr. Bedell has an amendment which is in the nature of a substitute. Is that correct?

Mr. BEDELL. That is correct.

We have worked with the Department in making some changes. I think that they have no objection to it as it is now worded.

The purpose of the amendment is to try to direct attention toward the needs of our foreign buyers so that we will, as we try to establish our standards, look at what the needs of those buyers may be; and try to best serve those needs so that we can be in a better competitive position in international trade.

The crux of the amendment starts at about line 8 where it says:

To determine the items of concern to buyers, both foreign and domestic, and how sellers in the United States might best satisfy those needs, the Secretary may seek the advice of and may employ the services of representatives of the grain industry, land-grant colleges, and other members of the public.

It goes on from that point.

The CHAIRMAN. Is there any discussion of the Bedell amendment?

Mr. SEBELIUS. I am for the amendment.

But I want to say that the USDA does have a laboratory on the subject of storage, handling, and transportation of grain. One of the purposes of that laboratory, which is in Manhattan, Kans., is to study insects and chemicals and their reaction to stored grain.

I think that that would be another facility that would be available and could be working at the present time. It has been underfunded ever since it was established and built. It is only at about one-third staff right now.

That would present an additional challenge on that very subject.

Mr. HARKIN. I would like to direct a question to my colleague from Iowa, Mr. Bedell.

I don't really see much difference between the committee print section on this and your amendment.

What is the bottom line?

Mr. BEDELL. The difference is that we are trying to focus attention on an effort to determine the needs of foreign buyers and consider those needs as we establish our own grain standards.

For example, test weight would appear to be of no concern to foreign buyers. If it is not of concern domestically, then we are pretty silly to have that be one of the standards that we now have in the act.

There is some question with regard to broken kernels, that is, as to whether this is of concern or not. Nobody seems to know whether it is or not.

The thrust of this amendment is to try to make a study so that we know what our customers really want and try to consider that in terms of setting up proper standards.

Mr. HARKIN. So the real difference is at about the third line of your amendment where it says, "needed to meet the end-use requirements of domestic and foreign buyers."

Mr. BEDELL. That is right.

Mr. BALDUS. There really is a need for our standards to be devised in such a way that it is not economically necessary or profitable to reduce the quality on large amounts.

We can blend in such a way that we can require further treatment on the other end to make it usable but still commercially viable because of the standards.

There is the question of blending and what is profitable and what has become practiced.

All of that is based on a standard that was developed many years ago.

Maybe we can develop a new and better standard. Then we can better develop a new and better service also.

Mr. MOORE. Mr. Chairman, I move the previous question.

The CHAIRMAN. If there is no further discussion, the previous question, without objection, is ordered, and the vote occurs on the Bedell amendment.

All in favor of the Bedell amendment, signify by saying "aye."

Those opposed?

The ayes appear to have; the ayes have it and the Bedell amendment is agreed to.

The next section deals with the reporting of complaints.

Again I raise the question of whether this is a useful provision.

The committee is already able to require the submission of and insist on a report by the Department regarding complaints received in connection with its oversight responsibility.

I recognize Mr. Fithian.

Mr. FITHIAN. Mr. Chairman, I think we are doing little enough in this bill anyway to encourage foreign buyers to return confidence in the United States.

One of the complaints which is frequently registered is that many of the buyers have simply given up registering their complaints with the USDA because nothing ever happens.

I would think that this would at least encourage them to get through the bureaucratic maze downtown and reach the legislative body with their complaints.

I think it behoves this committee, as all other committees in the Congress, to increase—rather than decrease—their oversight functions.

While the oversight functions may, in a general way, be available to us, I have not seen much in my 14 months here of the exercise of those.

So, I would be in favor of retaining this as at least a tentative and weak step to the proper exercise of the functions of this committee.

Mr. BERGLAND. While I am sympathetic, I frankly don't think this provision will do what you and I would like it to do.

I don't think that it serves any useful purpose.

What I can't quite figure out is that we have been told in the hearings by the Department authorities that there are very few complaints which are filed with the Department. I have read reliable accounts of the difficulties which foreign buyers have had with the quality of American grain.

I don't know to whom they complain.

Maybe it is to the newspaper people only.

But it seems to me that there is something lacking in the system. I suppose that there should be a distinction which should be made between a complaint and an appeal.

They may be handled in different fashions, but somewhere the system has bogged down so that these complaints or appeals just don't get to the attention of the proper authorities. They get sidetracked.

I don't think it would do us any good to hear those complaints because there is nothing that we can do about them anyhow.

Maybe the Department could respond as to how the system really works.

Mr. WILKINSON. May I respond?

I am Don Wilkinson, Administrator of AMS.

We do believe and have taken action to strengthen this entire process of complaints—whether appeals or complaints; we will assume that they are complaints at this time.

The process that we are now working up formally within the Department in connection with the Foreign Agricultural Service, is to have every complaint coming from a commercial receiver in a foreign country immediately go to the agricultural attaché at the U.S. Embassy.

This complaint is then formally forwarded to the Foreign Agricultural Service in Washington and in turn to our Agricultural Marketing Service where we will investigate.

Our findings, as a result of our investigation, as promptly as possible will go back through the channels to the Embassy and in turn to the commercial receiver.

We are implementing this process. We would be very pleased, as the chairman indicated, to provide reports on the number of complaints or the findings at any time as desired by this committee.

Mr. FITHIAN. May I ask if this is a recent development?

Mr. WILKINSON. This is a recent development as a result of the report from our Office of Audit. I think that you will also remember that it was recommended in the GAO report.

Mr. POAGE. Mr. Chairman, I think the committee wants to keep it in here.

Personally, I don't. I think that it is a great mistake.

I think that it is exactly in line with the thing that I proposed at the beginning of this determination. I still oppose it.

The U.S. Government guaranteeing the quality of grain is no good. If the foreigner is complaining to the U.S. Government, then there must be some obligation on the part of the U.S. Government to make good.

I don't recognize any such obligation. I think that all but three of the members of this committee do recognize that obligation. I think that you have to pay it.

I think that you have to carry the burden. As far as I am concerned, I am not going to carry it because I was repudiated a long time ago.

I don't believe in the U.S. Government guaranteeing these transactions. But why else should anybody else come to the U.S. Government with a complaint, unless the U.S. Government is guaranteeing the quality of the product that was delivered.

I don't think that the U.S. Government should do it, but you are all on record as favoring it; so therefore you will have to keep it in here.

But I do want you to understand what you are doing in that proviso in line 12 where it is provided that the summary shall not include the complaint unless reasonable cause exists to believe that the complaint is valid as determined by the Secretary.

In other words, before the Secretary sends you a list of complaints he has got to make a judgment. He has to pass on the validity of that complaint.

And by the time he sends it to you, it is something that he has said is a valid complaint.

I presume that the purpose, then, is for the Congress to pay the bill.

Why else would he send it to us? The Secretary of Agriculture has already made a judgment.

He is not sending you a list. This doesn't provide you with a list of those people who are complaining about not getting a square deal.

He sends you a list only of those whom he has determined have a valid complaint.

In other words, he has already passed judgment when you get the list.

I think that that is absolutely ridiculous, but it is clearly in keeping with the wishes of the committee; therefore I will vote against it, but I trust that the committee will accept it.

The CHAIRMAN. Would the gentleman yield?

I have the feeling that the Chair is urging the retention of this provision indirectly and without meaning to. I personally feel that it is an excessive requirement and one that will complicate and confuse, rather than assist the committee and lead to misunderstanding abroad.

One of the reasons that we are adopting the Bedell amendment is to try to get our grain standards and inspection focused more closely on the needs of our foreign as well as domestic purchasers.

In the past there has been a good deal of misunderstanding as to what the certificate means and whether or not there were related indemnity procedures.

I am afraid that this section will imply to foreign purchasers that the Congress will act as an appeal judge on each complaint received by the Department overseas and take special action as a judicial or arbitrating body. That is not what is intended.

I think this provision is misleading and hope that we would not accept it.

Mr. HIGHTOWER. I have a simple amendment which would provide for the deletion of subsection (a) of section 19 and the word "other" on line 9, page 23.

This would then mean that on February 1 of each year the Secretary would send up his summary of the complaints. I think that once a year is often as this committee is going to take note of it anyway.

I move the adoption of the amendment.

The CHAIRMAN. The Chair has a substitute.

I will propose to strike the section entirely.

Mr. FITHIAN. I would like to direct the attention of counsel to page 23, line 2, 3, 4, and 5. I want to ask for an explanation of what they mean.

Mr. BOR. This section came from Senate Joint Resolution 88. It also appears in the bill which recently was introduced and is being considered in the Senate.

The few lines that you refer to, Mr. Fithian, go beyond the question of faulty grain being delivered and would reach any kind of situation which might give rise to cancellation of a contract for the sale of grain.

Mr. FITHIAN. Then my thought on this was correct—we are talking about something more than the Department simply reporting to us about some French importer of American soybeans.

Incidentally, I might add, for the benefit of the committee, that my experience with two or three conversations with importers of our grain and an agricultural attache, who was in the process or in a position to know, shows this.

This was before you had implemented the system that we talked about.

It was clear that they simply stopped filing complaints because nothing was done about it.

I look upon this whole provision as a method of encouraging the Department of Agriculture to keep on its toes.

I don't look upon this as in any sense a guarantee that we are going to step in and legally pay. There is action that the Department can take. In the event of fraud they can institute legal proceedings. There are many, many actions that can be taken short of guaranteeing the grain, I would observe.

But this cancellation, it seems to me, that is the notification of cancellation, addresses itself to one of the problems that every member of this committee was very, very concerned about not long ago when the export bans were put on by the Department.

They do not call them export bans, but they are export bans if they get a voluntary agreement to cancel or to stop purchasing.

It seems to me that this small section here has almost been overlooked and we ought to address a great deal more attention to it than that.

I, for one, am absolutely opposed to a situation in which the Secretary of Agriculture runs up and down the cornfield touting the free market system and the Secretary of State cancels sales of grain abroad without even a "by your leave" from the highest legislative body in the land.

That is exactly what we are throwing out, Mr. Chairman, if we throw this out.

I think that those four lines ought to be taken and written in bold print to direct this administration to abide by the Export Administration Act which it has flagrantly violated at least three times in the last 2 years.

We are not going nearly far enough.

Rather than throw it out, I think we ought to address ourselves to the real problems that are affecting grain prices in this country; and the responsibility of this committee in the process.

Mr. SEBELIUS. I move the previous question.

The CHAIRMAN. It will occur first on the Hightower amendment to the amendment.

Mr. MOORE. A point of order. Mr. Chairman, I thought you had a substitute.

The CHAIRMAN. A motion to strike usually is considered after a motion to modify, inasmuch as the first question the committee should determine is whether it wishes to modify the section.

The question now occurs on the Hightower amendment which would strike subsection (a) of section 19, strike the word "other" in subsection (b) and renumber subsection (b) as (a).

All those in favor of the Hightower amendment will raise their right hands.

The CLERK. Seven.

The CHAIRMAN. Those opposed?

The CLERK. Six.

The CHAIRMAN. There being seven ayes and six nays, the amendment is agreed to.

The question now occurs on the motion to strike the entire section, as amended.

All in favor of the motion to strike will raise their right hands.

The CLERK. Five.

The CHAIRMAN. Opposed?

The CLERK. Ten.

The CHAIRMAN. There being 5 ayes and 10 nays, the motion to strike is not agreed to.

I think that we have reached the point where we have discussed as much of the bill as we can today.

Our next session is scheduled for Tuesday at 10 a.m.

The committee, therefore, will stand adjourned to meet at 10 a.m. on Tuesday.

[Whereupon at 12:10 p.m. the hearing was adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

TUESDAY, MARCH 9, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 10:20 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Melcher, Bergland, Breckinridge, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, Jenrette, D'Amours, Thornton, Sebelius, Findley, Thone, Symms, Johnson, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Gene Moos, staff analyst; John M. Lindley, Glenda Temple and Susan Bell, staff assistants; L. T. Easley, press assistant; Alan Gray, staff consultant, Subcommittee on Livestock and Grains; Jerry Jorgensen, staff consultant, Subcommittee on Department Operations, Investigations and Oversight.

The CHAIRMAN. The committee will come to order.

We meet this morning for further consideration of proposed amendments to the Grain Standards Act.

Several matters remain to be discussed before we complete action on the committee print.

Shortly I will recognize Mr. Bor, Mr. Moos, and Ms. Bell for a review of the remaining issues.

Before doing this, however, I recognize Mr. Bedell who has a proposal to amend the bill.

Mr. BEDELL. Mr. Chairman, we passed in the committee previously an amendment which I offered which had to do with making inspection services available for soybean meal through this bill.

I have been assured by the Department of Agriculture, and I have a letter to the effect that they can and will furnish these services through the AMS; and that it would be somewhat easier for them and would require somewhat less paperwork if they would do it in that manner rather than through this bill.

I would ask that I have unanimous consent to have that amendment stricken from the bill, and that the reference to the letter from the Department be made a part of the committee report and that the Department of Agriculture furnish a copy of said letter to the committee.

[The above referred to letter follows:]

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE,
Washington, D.C., March 2, 1976.

HON. BERKLEY BEDELL,
House of Representatives,
Washington, D.C.

DEAR MR. BEDELL: The purpose of this letter is to confirm statements made to you on February 26, 1976, by David Galliard, Director of our Grain Division, with respect to the inspection for quality of soybean meal exported from the United States.

The Department of Agriculture is authorized under the Agricultural Marketing Act of 1946 to inspect for quality agricultural products, including soybean meal, exported from the United States. The inspections are permissive and not mandatory.

The Department has inspected and plans to continue to inspect for quality, upon request of applicants for inspection, soybean meal being exported from the United States. The inspections for quality have been and will continue to be available at all ports in the United States.

Sincerely,

DONALD E. WILKINSON,
Administrator.

The CHAIRMAN. Is there any discussion?

The gentleman from Iowa asks unanimous consent to withdraw the amendment on soybean meal inspection and to substitute therefor reference in the committee report to a communication from the Department of Agriculture on this subject.

If there is no objection, it is so ordered.

Would counsel give us a summary of the issues still before the committee.

Mr. BOR. Mr. Chairman, there are just a few issues that remain.

One of the issues relates to the funding of the work that is to be done on this bill; namely, to what extent the expenses will be borne by user fees and to what extent they should be borne by appropriated funds.

We have been in consultation with attorneys from the Department of Agriculture, and they have brought to our attention some suggestions with regard to the provision which was adopted the other day on providing for Federal supervision of weighing. There are some technical issues which we would like to bring to the attention of the committee.

Then there remains an examination of the penalty provisions of the act. One of the questions which has arisen is whether the fines should be increased from those which are provided for in the committee print.

The fines in the committee print are rather minimal. They are \$3,000 and 6 months' imprisonment for an initial offense and slightly higher in the case of a subsequent offense.

Apart from that there is for the consideration of the committee the desirability of allowing the Department to hire personnel which is needed to carry out its weighing functions without regard to civil service laws as is provided for with respect to the work that it does on the inspection functions of the act.

There is also for consideration of the committee the question of whether it wants to retain the language in the committee print which authorizes foreign monitoring of grain which has been inspected under the act and shipped overseas.

I think that that broadly covers the issues which remain.

The committee may also wish to examine the language in the committee print which deals with refusal of inspection and civil penalties, apart from the question of criminal penalties.

There has been an amendment prepared which deals with the issue of funding which the committee might wish to consider.

The CHAIRMAN. I wonder if we could circulate that amendment at this time?

Mr. THONE. Mr. Chairman, while that is being circulated, would you agree, Mr. Bor, that we want to harmonize section 17 so that the weighing personnel would be included in the penalty provisions as are the current inspection personnel?

Mr. BOR. That is right, Mr. Thone.

I am sorry I didn't make mention of that.

I have prepared an amendment to take account of the suggestion you made the other day, and I think that is an apt suggestion on your part. This section needs to be changed.

Mr. THONE. You have an amendment prepared?

Mr. BOR. Yes; I have an amendment prepared.

The CHAIRMAN. Mr. Thone, do you want to discuss your amendment?

Mr. THONE. All that my amendment does is to harmonize section 17, which is a pretty tough criminal penalty section. It refers the Grain Standards Act to section 201 of title 18 of the U.S. Criminal Code.

As I remember those penalties, Mr. Chairman, it is 2 years' imprisonment, \$3,000 in fine, or both.

I am not exactly sure.

Counsel probably has the exact provision.

It is a tough one with the imprisonment section.

When we were in New Orleans, the government personnel down there felt very strongly that one of the areas that badly needed attention was the weighing area. They urged that there was a lot of short weighing going on, both in and out of the export facility down there, they stated that if we did not address ourselves to finally getting the USDA, and in particular the Grain Marketing Service, somehow into the direct supervision of weighing, we would really not have done the job that is necessary to be done.

So with this in mind, I was making section 17 applicable to the weighing personnel as well as to the persons performing the official inspection functions under contract with the USDA or USDA employees.

With that explanation, Mr. Chairman, I would move the adoption of the amendment now being circulated which amends page 25 by striking lines 1 through 12 and inserting in lieu thereof the amendment which is before you and reads as follows:

SECTION 17. Section 8(d) of said act is amended to read as follows:

Persons employed by an official inspection agency (including persons employed by a State Agency under a delegation of authority pursuant to Section), persons performing official inspection functions under contract with the Department of Agriculture, and persons employed by a State or local agency or other person conducting functions relating to weighing under Section shall not, unless otherwise employed by the Federal Government, be determined to be employees of the Federal Government of the United States: *Provided, however*, that such persons shall be considered in the performance of any official inspection functions or any functions relating to weighing as prescribed by this Act or by the rules and regulations of the Secretary, as "persons acting for or on behalf of the United States," for the purpose of determining the application of

section 201 of title 18, United States Code, to such persons and as employees of the Department of Agriculture assigned to perform inspection functions for the purposes of section 1114 of title 18 of the United States Code.

Mr. BERGLAND. Do I understand the gentleman to say that the only language added by this amendment would be to include weighing and treat violations of the weighing provisions the same as violations of the grading provisions of the act?

Mr. THONE. This is exactly right.

Mr. SEBELIUS. Will the gentleman yield?

Mr. THONE. Yes.

Mr. SEBELIUS. This would be the same as the inspection and other sections of the bill?

Mr. THONE. Yes.

The CHAIRMAN. If the gentleman will yield, I will ask counsel whether this section 201 of title 18 deals with interference with employees?

Mr. BOR. The reference to 1114 deals with interference of Department employees, and 201 I think is the bribery section.

The CHAIRMAN. I see.

Does everyone understand the purpose of this amendment?

Mr. Krebs, as I understand it this amendment would conform the weighing provisions of the committee print to appropriate sections in title 18.

In other words, if someone tried to improperly influence a person engaged in the weighing process through bribery in an effort to obtain favorable treatment, that would be considered a bribery offense under section 201, just as it would in the case of trying to influence the outcome of an official inspection.

Section 1114 extends the protection of the criminal statute prohibiting interference or intimidation of Federal employees to cover persons who either supervise or actually perform the weighing process.

Mr. KREBS. Thank you.

The CHAIRMAN. Is that correct, Counsel?

Mr. BOR. Yes.

The CHAIRMAN. Is there any further discussion?

If not, Mr. Thone moves the adoption of the amendment.

All in favor signify by saying, "Aye."

Those opposed?

The ayes appear to have it and the amendment is agreed to.

The CHAIRMAN. The Chair intends to offer the other amendment before you which deals with the financing of the inspection system

[The amendment follows:]

Page 6, strike lines 10 through 25, and page 7, strike lines 1 through 10, and insert in lieu thereof the following:

"(2) Each official inspection agency and each State Agency to which authority has been delegated under subsection (e) shall pay to the Secretary fees in such amount as the Secretary determines fair and reasonable and as will cover the costs incurred by the Department relating to direct supervision of official inspection agency personnel, direct supervision by Department personnel outside of the Washington office of its field office personnel and appeal activities incurred as a result of official inspection of grain by such agencies, but such fees shall not exceed 75 percent of the estimated total cost of Federal administrative and supervisory costs related to the official inspection of grain by such agencies and the designation and supervision of such agencies, except costs incurred under paragraph (4) of this subsection and sections 9, 10 and 14 of this Act. The fees shall be payable after the services are performed at such times as specified by the Secretary and shall be deposited in miscellaneous receipts to the Treasury

Failure to pay the fee within 30 days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment of the fee currently due plus interest and any further expenses incurred by the Department because of such termination."

The CHAIRMAN. Will counsel give a brief explanation?

Mr. BOR. What this amendment would do is to provide that the Secretary would establish the fees which had to be paid within—excuse me—the Secretary would determine what part of the expenses which are incurred by the Department of Agriculture in connection with its functions relate to official inspection.

The question is what part should be borne by user fees and what part by appropriated funds.

It sets certain guidelines and provides that the user fees will cover the costs incurred by the Department of Agriculture in the field relating to the official inspection functions but should not be any more than 75 percent of the total expenses which are incurred throughout the Department of Agriculture in connection with these functions.

There is another change which is made. This relates to what is done with these fees once they are collected.

The committee print provided that these fees would be put in a revolving fund account and would then be available for future use without the need to go through the appropriations process.

What this does instead is to provide that the amounts which are collected would be deposited in miscellaneous receipts to the Treasury. The Department would be required to go before the Congress and seek appropriations to cover on an annual basis its total expenses in connection with operations under this act.

Another change which is made in this amendment relates to the timing for the collection of these expenses. In the committee print the official inspection agencies were required to pay these fees in advance on a quarterly basis.

This provides that, rather than pay them in advance, they would be paid after the fees had been collected from the users. The State governments and the official inspection agencies would be forwarding them to the Federal Government after they had them in hand instead of through various devices seeking to obtain the money prior to the time of collection.

The CHAIRMAN. There are three issues involved here.

The first is how much of the cost, particularly that part resulting from Federal supervision and administration, should be borne by the users of the inspection service. The purpose of this amendment is to set some maximum figure that will be charged against user fees for supervisory and administrative costs, and specifies 75 percent of the total as the maximum which the Secretary could charge.

Mr. Hagedorn?

Mr. HAGEDORN. Is there any estimate as to the Federal liability? Does the committee have a ballpark figure?

The CHAIRMAN. Before yielding to the Department for a response, I would like to preface their comments by saying that this is extremely difficult to calculate without knowing to what extent the Secretary will be performing original inspection or to what degree he will be supervising. While the level of Federal involvement will be much higher at export points under the committee print, at inland points,

the Secretary could designate State or local government agencies or private agencies to provide official inspections.

To what extent to which the Secretary will actually be required to conduct original inspection at inland points, however, is not known at this juncture.

Mr. HAGEDORN. Thank you.

The CHAIRMAN. Mr. Johnson?

Mr. JOHNSON. What other illustrations do we have of the Federal Government charging user fees in conjunction with putting into effect some kind of inspection system which is of overriding national interest.

Why can't this come out of general revenues rather than fees?

The CHAIRMAN. Normally we do not charge users for providing meat inspection, for example, since this is considered a public service function.

The cost of grain inspection on the other hand has traditionally been borne by the users with a relatively small portion of appropriated funds being used to cover staff and supervision.

Now for the first time we will involve the USDA directly in this inspection process. I think it was the general thrust of the Department's recommendation as well as of most of the bills which were introduced, that the bulk of that expense should be borne by the industry.

Mr. JOHNSON. Are there any examples of Federal inspection or participation in the export trade or the business of other kinds where the Federal Government is involved in some way in the user fee?

The CHAIRMAN. I think there are some other examples. Perhaps Mr. Bor could respond to that.

Mr. BOR. Mr. Chairman, some commodities which are exported are inspected under authority contained in the Agricultural Marketing Act of 1946.

The CHAIRMAN. Is rice among those commodities?

Mr. BOR. Rice is one example.

When inspection activities are undertaken under that authority, then the users bear the expense of the work that is being performed by the Federal Government.

The CHAIRMAN. Also, we have the examples of appeal inspections in the case of grain where the USDA directly conducts appeal inspections. Where that inspection results in the finding that the original inspection was valid, there is a charge made. However, there is no charge if the previous decision is overturned.

Mr. JOHNSON. Mr. Chairman, as you know, I have been unable to spend much time on this particular discussion, but I wonder about charging these fees. It seems to me that ultimately the farmer is going to pay for them rather than either the consumer or the people who are being inspected.

I guess the charge is going to go against the innocent party in this case ultimately.

I wonder whether or not that is the way we should be doing it.

I raised that as a question because it appears to me that that is going to wind up going against the farmer. He's not going to be able to pass the cost off.

Mr. BERGLAND. If the gentleman will yield?

Mr. JOHNSON. Yes.

Mr. BERGLAND. I wonder if I might inquire of the Department about the range of fees now which are assessed?

Mr. KNEBEL. All over the lot.

Mr. BERGLAND. What sort of range are we talking about? Can you give us some idea?

The CHAIRMAN. While the Department is checking on that, if the gentleman from Colorado will yield, I would like to say something.

One could argue for a long time as to whether the costs of inspection should be borne by the producers, the grain trade, or, in the case of export sales, by overseas purchasers. The present arrangement is that the inspection costs are born by the industry collectively.

The Federal Government, private and State agencies do not pay the cost of inspection out of public funds except in the limited case of certain classes of appealed inspections.

The cost of the Federal supervision is included.

If the entire Federal inspection role were to be financed through appropriated funds, we would immediately run into the problem of how to finance inland point inspection, which, we assume, will be carried on in part by States or private inspection agencies who are in the habit of collecting fees for that purpose.

If there were a Federal system for export which was free to the inspection user while private and State agencies were charging fees, we would very quickly end up with an entirely Federal system.

Perhaps some members would like that.

Mr. POAGE. Will the gentleman yield?

Mr. JOHNSON. Yes.

Mr. POAGE. I don't believe the gentleman was here, but I think this is an illustration of the futility of this whole thing.

I think the question ought to be: "For whose benefit are you conducting this program?"

Obviously you are conducting the program for the benefit of the foreign purchasers.

I am perfectly willing to leave everything in the interior as it has been. I'm talking about the export ports.

But this proposition of inspecting and weighing grain at ports for somebody who has bought it to be delivered in Rotterdam or Singapore or anywhere else—for whose benefit is it?

It is for the benefit of the purchaser. It is only to his benefit to the extent that the U.S. Government guarantees it.

He assumes that the U.S. Government is putting a 100 percent guarantee behind it—which it is not.

The United States will be held up as a fraudulent guarantor. In the future, of course, we will be.

To me it does not make any sense at all.

Why not let these people do their own inspecting, make their own decisions as to what they are buying, and do their own weighing or inspect the weights as they go over the scales, and give them the opportunity to see for themselves what they are getting?

I don't think we own them any further obligation.

But we are assuming the obligation of a tacit guarantee. That's what we are assuming. You cannot get away from that. That is what this bill does—it puts the U.S. Government up as saying it is guaranteeing it.

We will then welch on it. We will say: "That's what we thought it was, but we signed our name and we put a reservation on it."

The United States is going to be considered a fraud everywhere over the world, and we will achieve nothing for American producers.

This does not benefit American producers to inspect the grain after someone has already bought it.

I just want to call your attention to the fact that what you are asking now emphasizes the utter silly position of the United States in this whole situation.

I am perfectly willing to go ahead with our program within the United States because we trade on that basis. It does benefit people to move the grain freely within the country.

But this idea that the United States is going to, with one breath, guarantee the grain and, with another breath, repudiate the guarantee cannot do anything except make us look silly.

I don't see any reason why we should pay for something that makes us look that ridiculous.

Mr. THONE. Will the gentleman yield?

The CHAIRMAN. The Chair notes that the gentleman from Colorado's time has expired.

I recognize Mr. Sebelius.

Mr. SEBELIUS. I am curious about this payment to the Federal Government.

I can understand how it works at the inland points.

Do you anticipate that if the State of Washington has delegated this authority that they will collect enough of the user fees to have enough money to make up for whatever the Federal Government doesn't pay?

The CHAIRMAN. Yes.

Mr. SEBELIUS. That would be an extra problem if we're going to have what the Senate bill proposes.

The State of Kansas has the user fee system. I have two pages as to what the fees are for every anticipated thing. But not only are they self-financing, but the State's general treasury gets 20 percent of all moneys that they take in.

There are some other State fee agencies of this type.

If we're going to authorize the Federal Government to assess in this area, then we are going to have to pay whatever the Secretary says will be the fee for those charges.

Mr. THONE. Will the gentleman yield?

Mr. SEBELIUS. Yes.

Mr. THONE. Commenting generally on this, let me say this.

We are not really making any drastic changes here. I will address my comments basically to the gentleman from Texas.

As I understand it, currently in the area of domestic grain the person who requests the inspection pays the fees.

This is the current procedure. Of course, the exporter pays the fee on anything that is exported.

I noticed in the testimony of Congressman Smith, of Iowa, that currently the Department estimated that they are collecting \$29 million in inspection fees, and that the fees charged by the States, Mr. Sebelius, total \$9 million. The fees collected by private agencies total \$20 million.

The Department, of course, does not know exactly what private agencies are collecting.

Mr. Smith then goes on to say that the Department also takes in another \$2 million in fees for the inspection of Canadian ports and for appealed inspection.

Mr. SEBELIUS. That's one of the elements.

I think that the Foley amendment is highly desirable as against the previous language because it puts some limits on what the Federal Government can charge if the State is doing some of these services. He states how much they can be compensated.

I think it's highly desirable, but I was just wondering if the author of the amendment did contemplate that they would charge enough to take care of whatever the expenses were.

The CHAIRMAN. Obviously the Secretary, in the case of export inspection, will have to make some judgment regarding the level of fees to be collected by delegated agencies.

Then, at all points the Secretary would be charging a portion of the supervisory and administrative costs to the private, local, or State inspection agencies conducting inland inspection.

Mr. SEBELIUS. If the State felt it was too high, then they could have the Federal Government inspect everything.

I yield back the balance of my time.

Mr. THONE. Mr. Chairman, does your amendment envision a uniform fee schedule?

The CHAIRMAN. Yes, it does, insofar as that is practicable.

Although I think it would be literally impossible to insure cent-for-cent uniformity everywhere in the United States, certainly this legislation would require the Secretary to insure uniform fees throughout the country to the degree that this is possible.

The second part of this amendment deals with the question of advanced payments by the inspection agencies.

Under the committee print, they would be required to make advance quarterly payments to cover the supervisory and administrative costs. I am afraid that such a provision would make it impossible for certain inspection agencies to function until they have had an opportunity to operate and collect fees.

This amendment would postpone the obligation to pay a portion of the collected fees to the Federal Government until such time as the inspection agency had received its designation and collected fees.

Finally, the committee print sets up what amounts to a revolving fund in the Treasury system and authorizes the Secretary to operate the inspection system from the fund.

On the basis of previous experience, I am afraid there may have been some objection to that procedure from the Appropriations Committee since that would limit its ability to supervise the operation of inspection agencies. For that reason, the Appropriations Committee would no doubt prefer that the Department be required to seek appropriations for the operation of the inspection service and that the fees be deposited in the general miscellaneous account.

Mr. JOHNSON. How would your amendment work with respect to the private stations such as we have in Colorado?

Would they be assessed a percentage fee even though they are doing their inspection under the Secretary of Agriculture?

The CHAIRMAN. Yes.

They would have to pay some fee to the USDA to carry part of the supervisory and administrative costs of the USDA.

Mr. JOHNSON. It's my understanding that the intention of the bill is that we don't bother the existing system.

The CHAIRMAN. At the present time, it is pretty much conceded that we have not had rigorous enough supervision of designated inspection agencies.

The Department and, I think, the authors of all of the bills before the committee anticipate that the Secretary will have a much more vigilant role with respect to designating official inspection agencies and supervising their operations.

This, of course, will result in additional costs which would be borne by the designated inspection agencies.

The Secretary, in the case of original inspection, would determine Federal fees in part on that basis as well.

So the amendment would serve the function of equalizing to some degree and spreading out the cost of Federal supervision in the program.

In the past the inspection program has been largely self-supporting so that there has been no need of substantial Federal appropriations. This amendment continues that basic approach by insuring that most of the Federal cost of supervision and administration of the inspection service would be borne by fees collected by designated private or State inspection agencies at inland points or by delegated State agencies at export locations.

Mr. BERGLAND. Would the chairman yield?

The CHAIRMAN. Yes.

Mr. BERGLAND. While it may be unlikely that we would see a world grain glut and a corresponding drop in price and a backing up of grain exports from the United States, but it could happen.

What control is there over the setting of fees by the Congress in the event such a grain market shift should take place and the Department decides that they're going to triple the user fees in order to be able to finance their establishment necessitated because of a sharp drop in volume?

Is there any control?

The CHAIRMAN. The gentleman has touched on one of the reasons why I am offering this amendment.

Instead of setting a fixed amount which would be charged by the Department to cover the cost of its administrative and supervisory functions as well as direct Federal inspection, this sets the maximum limit which can be charged.

Then if there should be a radical shift in the export situation due to a short crop in the United States and a large crop overseas, without a fixed minimum the Secretary could reduce the level of supervisory and administrative cost sharing at will in order to ease the financial burden on our inspection system.

Of course, the Congress obviously has oversight and legislative authority in this area.

Mr. BERGLAND. The annual request for appropriations would have some authority of course to look into the fee schedule as established as would this committee obviously.

In case it would be unreasonable, we could review it.

The CHAIRMAN. Yes.

Mr. BERGLAND. My next question goes to the second part of your amendment on page 9, line 18. The first section of the amendment deals with the provision of proceeds covering supervisory cost.

Am I correct that the second part would deal with the cost incurred as a result of direct inspection?

Mr. BOR. That is right, Mr. Bergland.

Mr. BERGLAND. The two would be the same?

Mr. BOR. The purpose of the amendment to page 9, line 18, is to make the system where the Federal Government directly undertakes the inspection exactly the same as is the case where you have original inspection by designated agencies.

In other words, where you have original Federal inspection, this would say then that the user fee should reflect the cost of the inspection function performed by the Federal Government and not more than 75 percent of the supervisory and administrative costs which are incurred by the Federal Government.

Mr. BERGLAND. I wonder if the Department is ready to respond to my earlier question concerning the range of fees?

Mr. KNEBEL. Yes, we will have Mr. Gaillard respond.

Mr. GAILLART. I will touch on the fees assessed by the official inspection agencies first—States and the so-called independents.

The range of fees for export work is based on a 1,000-bushel assessment. It ranges from 50 cents to \$2 per thousand bushels.

For other carriers, trucks, boxcars, hopper cars, it ranges from \$3 to about \$5.50.

On the Federal side, that is fees that we assess for export work, it is \$2.25 per 1,000 bushels.

For the remainder of the carriers, trucks, boxcars, and hoppers, it goes from \$9 to \$15.

Mr. BERGLAND. Thank you very much.

The CHAIRMAN. Is there any further discussion?

If not, all those in favor of the amendment will signify by saying aye.

Those opposed?

The ayes have it, and the amendment is adopted.

Mr. MOORE. Mr. Chairman, may I offer an amendment at this point?

The CHAIRMAN. Yes.

Mr. MOORE. I don't think this amendment will be objectionable.

Basically, what we are doing is adding language on page 26 in section 19 of the committee print, at line 11, as follows:

Strike everything after the comma through the word "Act," and insert the following:

That the approval be obtained as to the condition of carriers and containers for transporting or storing of grain, and that persons having a financial interest in the grain which is to be inspected (or their agents) shall be afforded an opportunity to observe the weighing, loading, and official inspection thereof, under conditions prescribed by the Secretary. The Secretary is further authorized to prescribe such other rules, regulations, and instructions as he deems necessary to effectuate the purposes or provisions of this Act.

My thinking is that if we really want to restore the integrity of our system to the foreign grain buyer or to the farmer who is doing the selling, then we should make it clear that the foreign purchases is not

to be precluded from being able to observe the weighing, inspecting, and what have you.

The reasons why we say "conditions prescribed by the Secretary" is to allow certain ground rules so that interference with the weighing process will not occur.

As I understand it, onsite inspection is not alluded to now in present regulations. Inclusion of this right at this point will assure the purchaser of the statutory right of inspection during the loading, weighing and related periods.

I believe my amendment will help us restore integrity to our system of foreign grain sales. If a foreign buyer knows that he has the right to have an agent present, credibility will be maintained in the purchase agreement.

That is about all there is to it.

I think we have discussed this before, not in committee but a number of us have discussed it. I think the GAO report on grain inspection alluded to this provision. Although I don't think the GAO report had any specific suggestions.

Mr. SEBELIUS. Will the gentleman yield?

Mr. MOORE. Yes.

Mr. SEBELIUS. What about the question of safety regulations?

I have never been to the Gulf exporting facilities. Do you have any problem as far as safety?

Mr. MOORE. I think this is what we were taking care of here under conditions prescribed by the Secretary. It may be that he will have to address himself to those issues.

It might pertain to wearing a safety helmet or assigning liability or whatever.

I think the Secretary can work it out.

I am simply saying that I don't see why a foreign buyer need be excluded in the system which has caused so much consternation to foreign buyers.

We can give them whatever security is required.

I would hope that the system would be so improved in the future that once foreign buyers had witnessed the operation, they would have confidence in our grain inspection standards and operations. In turn, this would recover lost faith and respect in our inspection procedures.

Mr. BERGLAND. I, of course, am in support of this proposition, but I am wondering from a drafting perspective if this matter was considered about 10 days ago.

I offered an amendment which I think the committee accepted. Does this conflict with what was done earlier?

Mr. BOR. Earlier the committee adopted a similar amendment to the part of the act dealing with prohibited activities. What the committee had adopted was a provision to say that it would be "improper for any person to knowingly prevent or impede any buyer or seller of grain or other person having a financial interest in the grain or the authorized agency of any such person, from observing the loading of grain inspected under this act, from the weighing, sampling, and inspection of such grain under conditions prescribed by the Secretary."

Anybody who violates this section would be subject to the criminal civil sanctions which are provided in the act.

The criminal sanctions are the fine and imprisonment and the civil sanctions would be the possibility of refusal of inspection or refusal of supervision of weighing and possible civil penalties.

The language is quite comparable to what Mr. Moore has just suggested.

Mr. MOORE. Mr. Bergland, I think we are actually authorizing the ability of the person to actually observe the inspection procedure. In the section you dealt with, you are penalizing someone who interferes with the presumed right.

Now we're giving the right.

Mr. BERGLAND. This would in no way conflict with what was done earlier?

Mr. BOR. No.

The other section that you had offered also provided that this opportunity should be afforded under conditions prescribed by the Secretary. So it did authorize the Secretary to prescribe conditions under which persons might observe the loading of grain, the weighing and sampling and inspection of grain. This is a companion proposal.

Mr. BERGLAND. So the amendment offered by the gentleman from Louisiana is not redundant?

Mr. BOR. No.

The CHAIRMAN. One could argue that the section offered by the gentleman from Minnesota gives the right by providing for sanctions when that right is interfered with while this amendment makes it specific that that right does exist.

Mr. THONE. Mr. Chairman, let me ask counsel a question.

Why do you strike on line 11 "and approval of the conditions of carriers and containers for transporting or storing grain"?

As I understand the amendment, that clause is stricken. Am I correct?

Mr. MOORE. We put it back in. This was a grammatical way of being able to insert the language.

Mr. BALDUS. Would the gentleman yield?

Mr. MOORE. Yes.

Mr. BALDUS. Although it is put back in, it is put back in a different context.

I am not sure you intended to do that.

It says that "the approval be obtained as to the condition of carriers and containers." That may infer each specific one.

I'm not sure that you intend to do that. I don't know whether you intend it to be a group or a class.

Mr. MOORE. No. There was certainly no intention of that. It was supposed to be the exact same language except grammatically constructed.

Mr. BALDUS. Would that wording "approval be obtained" or the other language be better?

Mr. BOR. I think one and the other are about the same, Mr. Baldus.

It is all prefaced by the words that the Secretary is authorized to require by regulation as the condition for official inspection, among other things, that approval be obtained as to the condition of carriers and so forth.

So the language is really the same.

Mr. BALDUS. It is all right with me.

The CHAIRMAN. Mr. Jenrette?

Mr. JENRETTE. The last sentence, "The Secretary is further authorized to prescribe such other rules, regulations, and instructions as he deems necessary to effectuate the purposes or provisions of this Act," does that broaden the entire scope of his authority to promulgate rules and regulations and any provisions of the act?

Mr. MOORE. That language is already in section 19. We just restated it. This was to grammatically complete that section. That language is on lines 13 and 14 of the committee print.

Mr. BOR. That is correct.

The CHAIRMAN. If there is no further discussion, will all those in favor of the Moore amendment signify by saying "Aye," and those opposed "Nay."

The ayes have it, and the amendment is agreed to.

Mr. BALDUS. While we are on this page, I have a question which perhaps the Under Secretary could answer.

This says that the Secretary may require by regulation as a condition for official inspection, among other things, the installation of specified sampling and monitoring equipment.

What I am concerned about is that it would be parallel authority on the part of the Secretary with regard to weighing equipment.

I understand that the weighing equipment can have variables in it.

I further understand that the companies have agreed to upgrade their weighing equipment and standardize considerably.

I note that there is language on, I think, page 13 that the Secretary may approve any weighing equipment.

I wonder if it would be helpful if on line 10, page 26, we could include this and have it read as follows: "Specified sampling, monitoring, and weighing equipment"?

The CHAIRMAN. Will the gentleman yield?

Mr. BALDUS. Yes.

The CHAIRMAN. The problem is that we have already taken actions which involve the postponement of our determinations on inland point weighing until the receipt of a study by the Secretary a year from now.

In the meantime is it your intention that we give the Secretary authority to require the use of certain weighing equipment at inland points?

Mr. BALDUS. I was thinking of export ports.

The CHAIRMAN. He has the authority in other sections of the committee print for that.

Mr. BOR. An amendment which was adopted the other day as the Fithian amendment—there was general authority given the Secretary at export port locations to prescribe certain requirements.

People in the Department of Agriculture had suggested some embellishment on this authority in order to make a little clearer the types of things they thought would be helpful in implementing the language of the Fithian amendment dealing with the supervision in weighing.

We have reproduced this for the consideration of the committee if the committee so wishes.

The CHAIRMAN. Mr. Baldus?

Mr. BALDUS. If it is the appropriate time, I will go with whatever the Chair decides.

The CHAIRMAN. The committee will note that this sets out requirements that would have to be met by the export port elevators before the Secretary would be required to provide weighing supervision.

Mr. BEDELL. If the Secretary does not provide weighing supervision, then what happens?

You cannot ship grain unless——

Mr. BOR. The amendment adopted the other day requires that grain which is shipped from export port locations would have to have its weighing supervised by authorized officials of the Department or by State agencies under a delegation of authority.

Then later in that same amendment it provides that nobody could ship grain unless the weighing has been supervised as provided in that section.

Mr. BEDELL. Thank you.

Mr. BERGLAND. Mr. Chairman, how does this amendment compare with the Department's affirmative action program for weighing? Is it in conflict?

The CHAIRMAN. The question, Mr. Under Secretary, is how does the proposed amendment before the committee comport with the affirmative action program just announced by the Department?

Mr. KNEBEL. The affirmative action program seeks to obtain the voluntary compliance by the major exporting companies to go to class 1 weights. At this point we have four court-imposed affirmative actions, and we are in final stages of negotiations with one of the major exporters of voluntary affirmative action.

There does not seem to be a major problem with respect to the companies with which we are negotiating with respect to the class 1 supervisory role in weighing.

I would say that your language dovetails quite well with what we are doing in the affirmative action area.

The CHAIRMAN. The thrust of this amendment, as I understand it, is to give the Secretary certain grounds on which to deny supervision of weighing thereby assuring the Secretary of the full cooperation of export port elevators. If they do not instruct their employees adequately or if they do not cooperate in providing the necessary information and undertake actions required by regulations, the Secretary is authorized, in effect, to withhold not to provide weighing supervision. This would have the effect of putting them out of the business of exporting grain.

Mr. HIGHTOWER. Mr. Chairman, following the (1) on the third line, it says: "Has and will maintain."

I do not understand the reason for that "has." I wonder if that would preclude anybody from going into business for the first time.

I wonder if it would not improve the language to strike the word "has" and leave in the word "will."

Mr. BERGLAND. In connection with that, as I recall the Under Secretary a week or so ago speaking on the affirmative action plan for weighing prescribed certain mechanical devices to be installed.

The CHAIRMAN. I think, Mr. Hightower, you read that "has maintained."

It should read as follows:

"Has suitable grain handling equipment and accurate scales," et cetera.

Mr. HIGHTOWER. I stand corrected.

Thank you.

The CHAIRMAN. Is there further discussion of the amendment?

The Chair would be happy to have anybody offer it who wishes.

Mr. Poage offers the amendment.

All in favor say aye, those opposed, nay.

The ayes have it, and the amendment is agreed to.

I think the next item we might take up deals with the criminal penalties of the act.

A question has been raised as to whether the criminal penalties of the existing act provide sufficient deterrents.

The committee print distinguishes three types of offenses subject to title 18 felony prosecution.

The remaining criminal penalties under the act are misdemeanors carrying either a 6-month sentence or a \$3,000 fine or both.

Some have suggested that the remaining offenses under the act should be strengthened to provide a penalty of up to 1 year in jail or a \$10,000 fine or both for the first offense and up to 5 years in jail or \$20,000 fine or both for subsequent offenses.

The first offense would remain a misdemeanor with heavy penalties while the second would constitute a felony.

Mr. POAGE. Mr. Chairman, I think again we are fooling ourselves.

If we cannot enforce the present law, then we are not going to enforce this one.

This idea of just imposing different penalties when you are not enforcing what you have, is not going to change much of anything.

I don't know that I have any objections to penalties, but after all it is the same old story. We have crime on the streets in Washington, D.C. You cannot do anything about it. Some thug knocks you down and nobody can do anything about it.

If the police haul him into court, then they give him a suspended sentence. If he gets a sentence in Lorton, he will get out very soon and be on the streets again.

It doesn't make much difference what the penalty is.

It is the enforcement of the law which is important. If we enforce the law that we have, then we could break up the violations.

But you are not going to make it easy to enforce just by doubling and tripling the amount of the penalty.

The CHAIRMAN. One of the concerns expressed by some of the people involved in the prosecution of pending cases was that the penalties for misdemeanors were fairly light considering the possibilities for abuse and personal gain.

It is a question of what the committee would like to do.

Mr. THONE. Mr. Chairman, I am a little at sea here. We are talking about section 15?

The CHAIRMAN. Yes.

Mr. BOR. The amendment which has been discussed would amend language on page 24 of the committee print.

Mr. THONE. Section 14?

Mr. BOR. Yes.

The first suggestion that has been made is on line 12 of page 24 that the 6 months would be changed to 12 months. On line 13, the \$3,000 would be changed to \$10,000.

On line 16, 1 year would be changed to 5 years.

On line 17, \$5,000 would be changed to \$20,000.

Mr. THONE. I agree with what Mr. Poage says. He always expresses a wealth of wisdom from tremendous experience with these matters.

One of the things that we have run into on this grain standards is the lack of supervision and tough enforcement.

As Mr. Foley points out, these are maximums.

Is not 5 years a little rough?

Mr. BOR. Mr. Thone, that would not apply to an initial offense. That would apply to a subsequent offense.

Mr. THONE. Maybe it should be 5.

I don't know.

With that in mind, I don't know that we need a long discussion on it, but I would move the acceptance of the changes which are specified.

Mr. POAGE. Will the gentleman yield?

Mr. THONE. Yes.

Mr. POAGE. How many people have paid the \$5,000 fine?

Mr. THONE. The \$5,000 on subsequent offenses?

Mr. POAGE. In other words, you are not enforcing the present law. You are not collecting any fines. You are not sending anybody to jail. You are not enforcing the present penalties which you have.

I do not believe that you are going to improve anything by simply saying that the penalty is four times greater than it was. If you don't enforce that, then you have not achieved a thing.

I don't know if I object to your new figures, but I just want to call attention to the fact that you're kidding yourselves and trying to kid the public when you say that you're going to have law enforcement by increasing the penalties, when you are not convicting anybody at the present time.

Mr. THONE. I don't know, Mr. Poage. They are convicting people in the gulf ports.

Mr. POAGE. Can you point to one where somebody has served a day?

Mr. THONE. I would refer to Under Secretary Knebel.

Judge Kelly has something. The Federal prosecutors must be diligent.

I would still argue, Mr. Poage, that severe penalties would serve a good purpose.

What troubled some of us is this, and I don't want to make a speech. But you had all kinds of violations going on in the gulf ports. You had the Secretary go down and visit with Gallinhouse to review the whole situation.

Mr. POAGE. They didn't put anybody in jail.

Mr. THONE. You are right, but I'm coming to it.

You had a group from this committee go down there with all kinds of public flurry. We were hardly out of New Orleans when this Polish ship episode took place.

Obviously these people feel that there is more potential gain here than potential penalty.

Maybe this will keep them doing what they're doing. Maybe this additional threat would have a deterrent value.

That is why I think we should put it in.

When they read "5 years" possible imprisonment, I think it will have a deterring effect.

Mr. POAGE. Doesn't the question come to whether a jury will assess a 20-year penalty more readily than a 5 year? Or \$1,000 more readily than \$20,000?

Mr. THONE. I think the judge would impose the penalty, would he not?

Mr. POAGE. If you cannot get it assessed at 5, then do you think you would get it assessed at 20?

I don't care. It's all right to have \$20,000, but I think you would more likely get a jury to assess a 5-year penalty than a 20-year penalty.

Mr. THONE. These are maximums, of course.

Mr. POAGE. I just think that the juries will probably impose the smaller penalty more readily than they will the larger one.

Mr. THONE. I will defer to the Under Secretary.

Do you think this will have a deterrent value?

Mr. KNEBEL. Mr. Thone, the presence in the statute could have a deterrent value; however, I think the major responsibility rests with the Department.

After the first offense we should make doubly sure that there is careful scrutiny of the individual before he's put back into the system.

Mr. THONE. I still think we need strong medicine here.

The CHAIRMAN. Gentlemen, the time has expired. I recognize the gentleman from Wisconsin, Mr. Baldus.

Mr. BALDUS. I would like the committee to consider that it does not say "not less than 6 months." It says "not more than 6 months."

The judge has plenty of discretion. It does not say "not less than \$3,000." It says "not more than \$10,000."

Again, the judge has plenty of discretion, and all we are doing is giving him more discretion.

It seems to me that the amendment would be helpful.

Mr. BERGLAND. I remember from last fall, someone testified before this committee or in the other body indicating that they were reluctant to prosecute under the Grain Standards Act because the violations were misdemeanors and the penalties were so minor that they preferred to go a more severe route using bribery and other provisions of the felony code.

The prosecutions and convictions under that code were more difficult to obtain.

I think, therefore, the proposition offered by the gentleman from Nebraska could help to serve as a deterrent.

The CHAIRMAN. Mr. Bedell?

Mr. BEDELL. It seems to me we have everything to gain and nothing to lose by increasing the maximum penalty available. I hope we would vote for it.

The CHAIRMAN. Mr. Fithian?

Mr. FITHIAN. I would like to be on record firmly supporting the increase in penalties because I think the penalties we have now in dealing with the large amounts of grain handled are a pittance.

I think that is why as the gentleman from Minnesota has pointed out nothing much will be done with the present situation.

I strongly support the amendment.

Mr. KREBS. I move the previous question.

The CHAIRMAN. Without objection, the previous question is ordered, and the vote occurs on the amendment of the gentleman from Nebraska, Mr. Thone, to amend the criminal penalties of section 14 by striking on lines 12 and 13, "6 months," and substituting therefor "12 months." It further strikes the figure "\$3,000" and substitutes therefor "\$5,000." Finally on lines 16 and 17 it substitutes "5 years" for "1 year"——

Excuse me, I correct myself. The first figure was to be "\$10,000."

Mr. BOR. That is correct.

The CHAIRMAN. It should read "\$10,000" in place of "\$3,000" and "5 years" in place of "1 year" for subsequent offenses and "\$20,000" in place of "\$5,000."

All in favor of the amendments signify by saying aye.

Opposed?

The ayes have it and the amendment is agreed to.

The next matter which the committee might address is the question of maintaining monitoring personnel at foreign ports.

The suggestion has been made that the Senate bill does not include this provision and that the Department has existing authority to maintain personnel at foreign ports on an ad hoc basis for such monitoring purposes as it may wish to undertake.

It is further suggested that additional authority would be unnecessary. Would counsel indicate to members where this issue is addressed in the committee print.

Mr. BOR. This appears on page 11 of the committee print on lines 4 through 6.

The CHAIRMAN. The Chair would propose to strike that portion of the committee print on lines 4 through 6 of pages 11, which deals with the performance of monitoring activities in foreign ports with respect to grain officially inspected under this act.

The Chair would suggest that, if this amendment is adopted, appropriate reference in the committee report will be given to the existing authority of the Secretary to undertake such action.

Mr. Baldus?

Mr. BALDUS. Counsel, there is reference to monitoring in foreign ports on page 27, section 19. Do you intend to leave that in?

Mr. BOR. On page 27, line 19, there is language which deals with the authorization for appropriations.

It provides an authorization for sums necessary for monitoring in foreign ports grain officially inspected under this act.

Mr. Chairman, if you were to delete what has been suggested on page 11 and refer to the residual authority of the Secretary, would it not then be appropriate to retain the language in section 19 so that if the Secretary did use his residual authority he could seek the necessary appropriations to implement that?

The CHAIRMAN. I would think so.

Mr. BALDUS. The recommendation would be to leave it there?

The CHAIRMAN. Yes.

Mr. BEDELL. Am I correct that this simply authorizes him as it is now?

The CHAIRMAN. Yes.

MR. BEDELL. It does not mandate that he has to do this to any great degree?

THE CHAIRMAN. The problem is that it may create some expectation that the Secretary will maintain permanent monitoring personnel at all international ports where inspected grain is received.

There is widespread doubt that this would be either cost effective or possible since it would require agreement with the foreign governments involved.

It seems better to strike it from the bill and instead to make reference in the committee report to the fact that he already has the authority if he wishes to use it.

MR. BEDELL. If you strike it from the bill, then he would no longer have the authority?

THE CHAIRMAN. No, that would not be the result since the authority already exists. The Secretary has monitors right now at ports in Europe and in other places.

Putting this authority into the act is unnecessary and redundant in my opinion.

In addition, its inclusion might imply that we will maintain permanent monitoring official abroad; and this really is not the intention of the committee.

MR. BEDELL. My feeling is that I would not want to mandate what had to be done.

By the same token, I would hate to think that by striking this we were giving the indication that we felt that the Department should not be concerned about whatever is necessary to monitor those deliveries into foreign ports to the extent that we are certain the people who are buying our grain are getting what they want.

THE CHAIRMAN. If there is substantial complaint received from any foreign port about the quality of American grain, then the Secretary might wish to make use of monitoring personnel.

Conversely, if there is no complaint and the new inspection procedures appear to be working as intended it seems unnecessary for the Secretary to maintain permanent personnel abroad whose function is less than clear at that point.

I don't think we should leave the impression that irrespective of how well the new system functions and despite general satisfaction with the product, should this be the happy result of our efforts, we are going to create a foreign corps of U.S. monitors abroad.

For those who feel the Senate bill is a model of wisdom, I might conclude by saying that there is no provision for foreign monitoring in the Senate bill.

MR. BERGLAND. I move the previous question.

MR. BOR. Mr. Chairman, would it be your intent also to strike lines 10 through 12 which is a related matter?

This deals with contracting with others to perform the monitoring function.

THE CHAIRMAN. Yes.

MR. BEDELL. If we do that, then does that mean that the Department would not contract with others if they wish to do so in foreign ports—that is, if we knock that out?

I would presume it does.

Mr. BOR. I think that the Department has residual authority to contract to have work performed which would carry out functions which are authorized under its various laws.

I would think that it would be able to contract with others to have the work performed if necessary.

Mr. BEDELL. Is that the situation, Mr. Hogan.

Mr. HOGAN. I think the question would be, Mr. Bedell, that if you put in the report that this was not intended to prevent the Secretary from exercising whatever authority he had in this respect, then I think that would be sufficient. I think it would be consistent with the deletion above on page 11 to delete this and leave the Department with its current authority, on an ad hoc basis, to perform monitoring functions overseas.

Whatever authority he wishes to exercise in this area, he could continue to.

Mr. BEDELL. My only uneasiness on this is that I believe it is vitally important in any business that you find out how you best serve your customers. I think it's important that you be sure you deliver to them the product they want.

I would hate to think the action we are taking here would indicate to the Secretary that we feel they should not do whatever monitoring may be necessary or whatever checking may be necessary at foreign ports to be certain that we are providing the quality product at the point of delivery.

Mr. KNEBEL. Mr. Bedell, we feel that if you strike the language on page 11, there is sufficient residual authority for the Secretary to conduct these affairs abroad.

Mr. BEDELL. You would plan to do so?

Mr. KNEBEL. As needed.

The one thing we don't want to leave is the impression that we plan to have people on a day-by-day basis in every foreign port where our grain is going. This affects the final certificate situation. We want to stay out of that.

We hope to clean up this legislation and that it will be such that when the grain comes out at the other end it will not be necessary to do this.

Also, for the purposes of research and the grading and standards question is involved also.

The CHAIRMAN. I would point out that the present provision in the act does not mandate the Secretary to conduct foreign monitoring. It merely authorizes him to do so.

Mr. BEDELL. Thank you.

The CHAIRMAN. If there is no further discussion, all in favor of the amendment striking provisions on lines 4 through 6 and 9 through 12 of page 11 regarding foreign monitoring signify by saying "aye."

Those opposed?

The ayes appear to have it.

The ayes have it, and the amendment is agreed to.

Mr. HARKIN. May I ask a question of counsel?

I am sorry I missed the recent vote where you changed the fines. I understand it was changed to 12 months and not more than \$10,000, is that correct?

Mr. BOR. Yes.

Mr. HARKIN. Bunge pleaded nolo contendere. They were fined \$20,000 on 2 counts if I'm not mistaken.

Was this under the same section as this or a different section under which they were fined?

Mr. BOR. Mr. Harkin, I think they were found guilty under some general provisions of title 18 of the United States Code and not under the Grain Standards Act.

Mr. KNEBEL. That is correct.

Mr. BOR. If they had used the Grain Standards Act, then all that could have happened would be a fine of not more than \$3,000. That is one reason that the U.S. Attorney used the general conspiracy provision.

Mr. HARKIN. I am not much of a prosecuting attorney, but isn't it pretty hard to prove a conspiracy to get a conviction under the conspiracy statute?

It is much harder than it would be to get a conviction under this provision in the Grain Standards Act I would think.

Therefore, it seems you would still have fines that are minimal. You are still talking about a \$10,000 fine.

Mr. Knebel, could I address that to you?

Mr. KNEBEL. Mr. Harkin, I believe the reason the U.S. attorneys are proceeding under title 18 is their familiarity with that section.

Also, the sanctions are stronger. There is a lot of good case law on it. There is very little case law under the Grain Standards Act.

Mr. THONE. What's the \$50,000 penalty in section 10 on page 19 in the bill. What does that go to?

Mr. BOR. That is a civil penalty, Mr. Thone, which could be imposed by the Secretary if the Secretary found that there was a violation of the act.

Mr. THONE. Is that not what Mr. Harkin is referring to?

Mr. BOR. That is a separate matter. That would not be pursued by the U.S. attorney as a violation——

Mr. THONE. I agree.

If Bunge were transgressing and if the Secretary says a \$50,000 fine against them——

Mr. BOR. Under the committee print that would be the case.

Mr. HARKIN. Would he have to take them to court? What kind of a process would he use to levy this penalty?

Mr. BOR. The way the committee print is structured, this would be assessed administratively after a hearing before an administrative law judge.

The party adversely affected could, if he wished, appeal to the court after the determination of the Secretary.

Mr. HARKIN. So it does not make any difference whether or not they have been convicted under the criminal penalty provision of this bill or not?

Mr. BOR. It would not be necessary for there to be a prior conviction in order to initiate civil proceedings for collection of the \$50,000 penalty.

Mr. THONE. That \$50,000 penalty goes to each and every violation of the act?

Mr. BOR. That is correct.

Mr. HARKIN. Mr. Thone, we just had this recent incident with the Polish ship.

Mr. THONE. Yes.

Mr. HARKIN. As I understand it, there were 3.2 million bushels on that. I figured that if they misgraded it by a little bit, then there could be as much as a 10 cents per bushel difference in the grading.

If you take 10 cents per bushel times 3.2 million bushels you have \$320,000.

What is a \$10,000 fine if you're going to make \$320,000?

Mr. THONE. My rebuttal would have to be this.

The imprisonment part of the section would apply. That is where the real teeth would be. We also oppose title 18, and this is most important.

Mr. HARKIN. Do we have an imprisonment section in the previous bill?

Mr. THONE. Yes. Six months. It was a misdemeanor and 6 months.

Mr. HARKIN. All we have done is to up it by 6 months. That doesn't seem to deter them.

The CHAIRMAN. If the gentlemen will yield, we transferred three offenses to title 18: Bribery, interference with an official of the inspection service, and—

Mr. HARKIN. That has all been transferred?

The CHAIRMAN. Yes.

Mr. THONE. And made felonies?

Mr. BOR. Made felonies under title 18.

The CHAIRMAN. Other offenses under the act which have not been transferred to title 18 are those with which we dealt today. The penalties are much stricter in this bill than in previous legislation.

Mr. FITHIAN. Mr. Chairman, I have an amendment. I do not want to interrupt the procedure of amendments which you are working out here, but I have one.

The CHAIRMAN. I think we have nearly concluded our work except for resolving the question or whether or not we want to include in this legislation authority for temporary denial of inspection by the Secretary.

Mr. BOR. There are about three or four other matters which remain to be discussed.

The CHAIRMAN. I recognize Mr. Fithian.

Mr. FITHIAN. If the clerk will pass out the amendment, I will discuss it.

Mr. Chairman, I would leave to counsel the location of this amendment. I might suggest between lines 20 and 21, page 20, as a possible location for it.

The amendment deals with a different kind of conflict of interest than that which we have been discussing.

We are all aware that in our Federal regulatory agencies today we have a tremendous amount of exchange of personnel and what I would call the revolving door between the regulator and the regulated company.

What I am suggesting is that, by the means of this act—and I would then be prepared to offer this to other pieces of legislation offered to the Congress—that we attempt to close the revolving door between the Government and corporations which they regulate.

What I am proposing is this:

Notwithstanding any other provision of law, any person having been employed by USDA in functions involving grain inspection or supervision of inspection or weighing of grain who accepts compensation for any employment or services with any company or corporation which deals in international sales of grain shall be deemed as having violated this act and shall be punishable upon conviction by penalties not greater than a fine of \$10,000 or imprisonment for 2 years or both. Such prohibition if employment for compensation shall extend to a period of not less than 3 years after the last date of employment with the USDA in such capacity.

This is not breaking entirely new ground.

For penalty provisions, it's \$10,000 and 2 years. This is taking from the present law which is title 18.

This provides for the prohibition against someone leaving a regulatory agency and going into industry and then representing that industry before that committee of which he is a part prior to the expiration of 1 year.

The second precedent for this is the Defense Department which has worked out something somewhat stronger in prohibition of sales contracts which would prevent for life someone who worked on the contract for the B-1 bomber and then subsequently goes to work for Lockheed.

My suggestion here is to get at that which I think is harmful to the entire process.

I could cite a long list of examples of people who are in the Department of Agriculture, came there from a large grain corporation, went back to a large grain corporation. These were people who started with Secretary Hardin. They went from the Department to Ralston-Purina.

Secretary Butz came from Ralston-Purina. Mr. Palmby, Mr. Brunt-haver, Mr. Merriman, Mr. Shanklin, Mr. Pulvermacher, Mr. Turnquist, and Mr. Pearce. We get on down into the lower echelon and this list would go on endlessly.

We have the more recent case of Ms. Beverly Splane which comes to mind.

I think those of us with legislative authority should attempt to close this revolving door between regulatory agencies, inspection agencies, and the companies which they inspect.

I do not know that we will fully succeed in this, but I think we ought not to rest until we try.

The CHAIRMAN. Will the gentleman yield?

Mr. FITHIAN. I would be happy to yield.

The CHAIRMAN. I do not want to foreshorten debate on the gentleman's amendment, but I think it would be better to bring it up at our next meeting so it can be fully discussed by the greatest number of members possible. The gentleman's amendment will be the first matter for consideration at the next meeting.

Mr. FITHIAN. I will defer to the judgment of the Chair.

I think this is an important matter. I realize it is breaking new ground as far as agricultural legislation is concerned, but I feel very strongly that we simply have to shut off the interchange of personnel between the Department and grain corporations. I would urge the adoption of this amendment at our next meeting.

The CHAIRMAN. The committee will stand adjourned to meet at 10 a.m. tomorrow.

[Whereupon at 11:45 a.m. the hearing was adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

WEDNESDAY, MARCH 10, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Vigorito, Melcher, Mathis, Bergland, Brown, Bowen, Breckinridge, Nolan, Weaver, Baldus, Krebs, Bedell, McHugh, Fithian, D'Amours, Wampler, Sebelius, Thone, Johnson, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; John E. Hogan, associate counsel; Gene Moos, staff analyst; Nick Ashmore, Glenda Temple, and Susan Bell, staff assistants; L. T. Easley, press assistant; Alan Gray, staff consultant, Subcommittee on Livestock and Grains.

The CHAIRMAN. The Committee on Agriculture will come to order.

We meet today for further consideration of the proposed amendments to the Grain Standards Act and other related matters.

First the Chair will recognize the gentleman from California, Mr. Krebs, for a statement.

Mr. KREBS. Mr. Chairman, it is certainly a pleasure to be able to introduce to the committee a resident of the great State of California, the 1976 Maid of Cotton, Victoria Laughlin, from Newport Beach.

Victoria, please raise your hand so we can all see you. [Applause.]

Victoria, it is a pleasure to have you here with us this morning. I hope that other members of the committee will be able to join us at a reception which will be held this afternoon, I believe from 3 to 5. I think you have all received letters and we hope to see you then.

Victoria, thank you for joining us today.

Miss LAUGHLIN. Thank you.

Mr. KREBS. You are welcome to stay if you can spare the time.

The CHAIRMAN. The committee welcomes you and your companion. We are very happy to have you here this morning.

The Chair next recognizes the gentleman from Iowa, Mr. Bedell.

Mr. BEDELL. Mr. Chairman, I am very pleased to introduce to this group a large number of Farm Bureau members from Iowa who are here. I met with them last night and they spoke to me regarding their interest in our legislative activity.

While I may, I would like to mention that, as many of you know, I am having a farm convention this week here in Washington where a large number of farmers from my district have come into Washing-

ton to meet and discuss farm problems. I hope that as many members as possible from the committee will come to the reception we are having tonight.

I would appreciate it if those members of the Farm Bureau from Iowa who are here would stand up so we can give them a hand, Mr. Chairman. [Applause.]

The CHAIRMAN. We also welcome you to the committee, gentlemen, and are happy to have you with us today.

At the close of business yesterday the committee had under consideration a proposed amendment by Mr. Fithian. I believe a copy of Mr. Fithian's amendment is before each member.

[The amendment offered by Mr. Fithian follows:]

Sec. Notwithstanding any other provision of law, any person having been employed by U.S.D.A. in functions involving grain inspection or supervision of inspection or weighing of grain who accepts compensation for any employment or services with any company or corporation which deals in international sales of grain shall be deemed as having violated this Act and shall be punishable upon conviction by penalties not greater than a fine of \$10,000 or imprisonment for two years or both. Such prohibition of employment for compensation shall extend to a period of not less than three (3) years after the last date of employment with the U.S.D.A. in such capacity.

The CHAIRMAN. The Chair recognizes Mr. Fithian for 5 minutes.

Mr. FITHIAN. Thank you, Mr. Chairman.

As I said yesterday, I think that the whole matter of the interchange of personnel between a Government agency, particularly a regulatory agency, and private enterprise poses one of the most serious problems we have with regard to the Federal Government and its viability and its acceptability to the average person.

I have offered this amendment zeroing in on any particular group.

I am prepared, as a member of the Small Business Committee, to proceed with the battle of the principle that this amendment directs itself to, and I shall proceed with that battle on the authorizing legislation for all regulatory agencies. I do that because I think it is absolutely important that we stop the movement of policymakers in the Federal Government into private industry which they have been in the process of regulating.

I think that is the fundamental concept here at stake, Mr. Chairman, and I think the principle is well worth our considering. I repeat I am not singling out the Department of Agriculture. It just happens that that is the bill that is before this committee.

I have been working on the problem of the revolving door syndrome in the Small Business Committee and individually in my office for several months. This is the first bill that offers me the opportunity to test this principle.

Let me now direct your attention specifically to the amendment.

Mr. FITHIAN. The amendment, I have been advised by counsel, and perhaps I can direct this question to Mr. Bor, I did not intend the amendment to extend to State Department of Agriculture personnel in those cases where a State is delegated the responsibility for inspecting and/or weighing as the outcome of this act may determine.

I want to be sure that we have not done that. I would just ask Mr. Bor to comment on whether or not the technical wording of this would get us into that problem.

Mr. BOR. You are correct, Mr. Fithian. The way this is drafted it applies to persons who are employed by the Department of Agriculture, and persons who are employed by State governments under delegations of authority are not considered employees of the Department of Agriculture under the committee print except for the purpose of certain criminal provisions, one deals with bribery and another with intimidation.

Mr. FITHIAN. Thank you.

The penalties which have been set forth in this provision are not original with me. They come from the basic act of the code and statutes, paragraph 207, pages 364-365, where for other cases a person representing a company before a regulatory agency of which he has been a member prior to the expiration of 1 year would be found guilty of that and could be penalized in that amount.

Finally I would like to address myself to the stickier question which this amendment raises, and that is people who in good faith have taken a job with the Department of Agriculture before the Fithian amendment was put into law and may be found in a position of great difficulty, or we may be in a position of great difficulty constitutionally. I am not sure.

I would welcome clarification of that, but I would say it is not uncommon in private business, and I think it ought not to be uncommon in public business, that we make this sort of thing a requirement for employment, that is, an agreement or an understanding that they would be violating the law, as a condition of employment.

If counsel or if the wisdom of the committee is such and hold that the amendment as now drafted would get into constitutional problems of the freedom of the individual who is already employed, I would acquiesce in the modification of the amendment.

I really believe it is important that we establish the principle, and that is what I am driving at this morning. I think we simply have to eliminate the situation where people from regulatory agencies are put in positions of great temptation to adjust their judgment in return for probable or actual future employment.

Much has been said here by the distinguished vice chairman and others that by making inspectors Federal, you cannot legislate morality. As a historian I totally agree with this. We tried that with the Prohibition Act and it did not work.

Therefore, I think we should address ourselves to those things which would lead us to a point where we do not unduly tempt those who are in positions of policymaking to so conduct themselves that they ingratiate themselves with the prospective employer, and I believe, therefore, it is essential to the integrity of the system that we hedge out the possibility that a USDA policymaker supervisor or inspector at a port terminal could on departure from the Department go immediately into the employ of one of the major grain corporations dealing in international trade. I think the temptation is far too great and we should be doing something about it.

We have a long list of violators of this concept. They are here in this town and they are out abroad in corporations across this land by the tens of thousands.

When a person leaves a regulatory agency and is hired by a corporation, that corporation is given an undue advantage over its competi-

tors, and we by that measure destroy the free enterprise system and destroy competition.

I think that those people, the farmers who produce grain, who stand to win or lose substantial amounts of money because of the conduct of the inspection system, ought to be afforded this kind of protection. We simply ought to stop the unseemly traffic from the Department of Agriculture into those businesses with which the Department has had very close relationships as an agency which sets the rules of the game.

I would say it is not just the Department of Agriculture. All the regulatory agencies and departments ought to address themselves to the same problem.

The precedent legally has been set. The Department of Defense has worked out a similar situation for a period of 2 years. The law has been set whereby you cannot represent them before a regulatory agency for a period of 1 year, so we are not entirely breaking new ground. Yet the principle we are establishing I think is a very important one.

Mr. KELLY. What would happen in instances where an individual would be separated from the Department of Agriculture because there was just a reduction in personnel? I cannot imagine anything like that, but just in case it happens, or in the event an individual is separated because his employment was not satisfactory, this bill would prevent his working in an area where he is experienced.

Mr. FITHIAN. I appreciate the distinguished gentleman's concern. I would point out that we are talking only about an inspection of export facilities. We are talking only about employment or denial of employment with half a dozen or so corporations which are involved in international grain trade. I think of the thousands and thousands of country elevators and State departments of agriculture and others who would need this kind of an employee. I can sympathize a bit for the two cases you cited, but if we start splitting hairs and exempting this category and putting that other category in we get into a sticky wicket.

My time has expired, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Bedell?

Mr. BEDELL. I have an amendment to the amendment. Is it proper to introduce it at this time?

The CHAIRMAN. Yes; it is.

Mr. BEDELL. My amendment reads as follows:

Following the amendment insert additional wording "provided, however, that this provision shall not apply to persons who are already employed by the Department in such functions at the time of enactment of this Act."

The CHAIRMAN. The gentleman is recognized in support of his amendment.

Mr. BEDELL. If we want to tell people, "If you come to work for us these are the provisions under which you come to work," it seems proper to me. It seems to me it is not proper to hire someone and then, after they have accepted that employment, put particular restrictions upon them.

Mr. FITHIAN. Would you state the amendment again?

Mr. BEDELL. Following your amendment it would read as follows:

Provided, however, that this provision shall not apply to persons who are already employed by the Department in such functions at the time of enactment of this Act.

Is it proper to say "Act"?

Mr. BOR. "Of this Act."

Mr. BEDELL. This is an act.

The purpose is pure and simple, and that is so that anyone who came to work would realize the limitations under which they were accepting such employment.

I certainly agree with the concerns expressed by my friend from Florida.

I would say that I think you intend to agree, Judge, so many times we go so far in trying to legislate the freedom for people we are so concerned about that we end up without what we would like to have ourselves.

At least it appears to me that these restrictions, wherein they apply, still leave people tremendous opportunities for various types of employment in our society, and with the problems which I believe have been caused by the movement back and forth, not only within the Department of Agriculture but other departments as well, from those agencies which we are trying to regulate, I think it is a very serious problem we face in society.

Mr. KELLY. If the gentleman would yield, would Mr. Fithian and the gentleman from Iowa agree to a unanimous amendment to include the word "directly" after the word "deals" in the fifth line so it would read "deal directly with international sales of grain"?

Conceivably it would be hard to limit it to six companies under the general language dealing with international trade. People can sell a bushel of grain to a dealer.

Mr. BEDELL. It is somewhat more than six but I certainly would have no objection.

Mr. KELLY. Do you object?

Mr. FITHIAN. I would be willing to accept that because I suppose one could construe it such that if a person owns some stock in one of these companies he might somehow be precluded, or some other company which deals with these companies, so the word "directly" I shall be happy to accept.

The CHAIRMAN. Counsel?

Mr. BOR. Just by way of clarification, Mr. Bedell, to get the thought of your amendment across would you prefer to have it apply to those who are employed by the USDA after enactment of this act? The way you have it stated, it may not cover all those people. It may not excuse all of those people that you have indicated you would like to excuse.

The reason is that the way this is drafted it applies as a prohibition of employment for a period of 3 years after the last day of employment with the USDA. It may well be that somebody who was employed in the USDA, and had his function changed from a function dealing with grain inspection to some other function, say, 2 years ago would still be caught by the bill.

Mr. BEDELL. I do not mean this for anybody who has been employed in the last 3 years to be caught by this bill. It states:

Provided, however, this provision shall not apply to persons who were already employed by the Department in these functions at the time of enactment.

I am not an attorney but that would mean——

The CHAIRMAN. If, for example, someone were not employed by the Department of Agriculture, to perform either the inspection or weigh-

ing functions at the time of the act but had been so employed a year previously before being transferred out of that division, he would be covered by the provisions of the act under this language. Is that what you intend?

Mr. BEDELL. I am sorry. I don't follow you.

The CHAIRMAN. The proposed amendment has a 3-year reign. If somebody were employed in the grain division in 1974 and transferred to FCS in 1975 before leaving the Department, he would be covered by the act under the language you propose.

You don't want them to be covered, however.

Mr. BEDELL. That is right.

The CHAIRMAN. The suggestion of the counsel would be that the act shall apply only to employees——

Mr. BOR. "Provided, however, that this provision shall apply to persons employed by the USDA after the enactment of this bill."

Mr. BEDELL. All right, in these functions. I agree to that. I ask unanimous consent.

The CHAIRMAN. Without objection, then, your amendment will be conformed accordingly.

I promised to recognize Mr. Sebelius, and then I shall recognize the gentleman from Minnesota.

Mr. SEBELIUS. I suppose we could call this the Clarence Palmby-Orville Freeman amendment because they both would have been involved to give it that kind of title. That is well and good. It doesn't bug me at all. They are two prime examples of what this would give us.

In that language you say :

Grain inspectors, supervision of grain, or weighing of grain, and deals with any corporation or company which deals in international sales of grain.

I suppose that would cover every country elevator in Minnesota and elsewhere that might ship grain into Canada.

Likewise, I know one very good example. Far-Mar-Co, which is nothing but a company involving all the coops in the several States in my area and headquartered in Kansas. They are involved in the international sale of grain.

Are we barring every USDA employee from belonging to that organization? By the language of this amendment you have involved them in this and you have provided for penalties. Two years and \$10,000 fine is involved for some farmer who belongs to a co-op and also might work for the committee or work in the Federal inspection service.

I just feel with all these amendments they are becoming a bunch of band-aids in a bill that is very important to us. The language there scares the living daylights out of me.

Charlie Frazier worked for the USDA. Now works for the NFO. They are involved in international sales of grain. We hit a very fine individual and fine employee.

Frankly, it scares me, Mr. Chairman. I don't think we are doing anything but giving a little window dressing to a problem which should be studied in depth.

Mr. FITHIAN. If I understood Mr. Bor correctly, I would point out that none of the cases to which you referred would, in fact, qualify.

As to the earlier comment that this is a Palmby-Freeman amendment, let me cite for the gentleman's benefit almost at random selection——

Mr. SEBELIUS. It is my time. I know all the names. There is a problem which should be dealt with by this committee, but it will not be dealt with in a haphazard manner and wind up with all the farmers belonging to co-ops in the State of Kansas being subject to 2 years of imprisonment by reason of fact he might also work for the USDA and be involved there.

Mr. FITHIAN. Would that in fact apply? I understood his instruction to indicate that would not apply.

Mr. SEBELIUS. This loose language applies every day when the bureaucrats get to interpreting what we meant when we did not mean it. I am sick and tired of it. My farmers and people are tired of big government telling them what will happen to them.

The latest thing right now is a combine 25 miles from home which has to be certified and everything else because of a bill which went through the Congress 4 years ago which never even mentioned the possibility of such. That is why I mentioned that Far-Mar-Co and he co-ops are one organization and are exporting grain.

I would say to the chairman and the members of the committee, if we want to respond to the fact USDA employees have gone to private business, both sides of the aisle, let's address ourselves to that and not put band-aids on a good product.

Mr. KELLY. Are the farmers you have reference to in those co-ops one of the six international grain dealers?

Mr. SEBELIUS. They belong to a local co-op which is the membership of Far-Mar-Co.

Mr. KELLY. I understood we were assured there were only six such people in existence.

The CHAIRMAN. If the gentleman would yield to me, the amendment offered by the gentleman from Florida was to insert the word "directly involved in international sales of grain."

As far as I know, the number of firms directly involved in international sales of grain, either import or export, is much larger than the six major trading companies. We are also talking about hundreds of small firms.

Mr. KELLY. That was my question, Mr. Chairman. There was some contradiction to the suggestion there were only six.

Mr. SEBELIUS. Six big ones are commonly referred to. We have many farm co-ops. They have an export elevator on the Mississippi.

Mr. FITHIAN. How do they qualify?

Mr. SEBELIUS. Far-Mar-Co commits so many acres of wheat so they can directly deal with foreign countries and try to bypass some of the big grain companies. It just scares me.

I am not saying the idea is wrong. I think we need to work on the idea. However, we have not had hearings on this particular subject. We should deal with it at the proper time.

Mr. FITHIAN. If the gentleman would yield for a question, are you saying Far-Mar-Co employees are employees of USDA? Are you saying Kansas farmers are employees of USDA?

Mr. SEBELIUS. They have hundreds of employees in Kansas and almost every one of them belong to a local co-op. I belong to a local co-op. The local co-op is a membership making up Far-Mar-Co which exports.

The CHAIRMAN. The time of the gentleman from Kansas has expired. Mr. Bergland?

Mr. BERGLAND. Mr. Chairman, I would like to direct my questions to counsel.

I am sympathetic with the objectives stated by the amendment offered by the gentleman from Indiana but I am not sure this would go at it the right way.

I know there is a law which requires an appropriate period of meditation between the time an employee leaves certain functions of Government and assumes responsibilities in certain elements of the private business world.

I don't know whether that is part of the general code of law or whether there are specific items in the law dealing with various and sundry employees.

I know that the Defense Department is operating under a mandate, and certain employees of the Department of Agriculture are similarly bound.

Can you tell me what the law in this regard is now?

Mr. BOR. There are a couple of provisions of law which apply to former employees of the U.S. Government.

One provision sets a permanent prohibition on employment, I will read it to you. It states:

A person may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest, in which he participated personally and substantially for the Government.

That provision says, in effect, that if you were involved personally and substantially, while you were an employee of the Government in connection with the handling of a claim, when you left Government employment you cannot thereafter for any period of time be involved in representing a private party against the Government on the same matter.

Mr. BERGLAND. That would include persons employed by the Federal Power Commission, the Defense Department, or any other agency?

Mr. BOR. That is correct.

Then there is another prohibition, a 1-year prohibition. That states that:

Such a person may not for one year after his Government employment has ended represent anyone other than the U.S. in connection with a matter in which the U.S. is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service.

This provision covers a matter which was within a person's general scope of responsibility while he was a Government employee. It states that after his Government employment is terminated for a period of 1 year he cannot represent somebody before the Government in connection with such matters.

Mr. BERGLAND. Would you construe the amendment offered by the gentleman from Indiana to be the same as current law except he would extend the prohibition period from 1 year to 3 years and attaching certain penalties, a \$10,000 fine for violation?

Mr. BOR. The amendment by Mr. Fithian, I think, is much broader than the provision which is now contained in existing law. This would reach anybody who was working in functions involving grain inspec-

tion and it would prohibit him for a period of 3 years from being employed with a firm directly involved in sales of grain, regardless of whether the function he would have while working for the trade was related in any way to the function that he had when he was an employee of the Department.

This provision would bar him from employment with the grain company even though the employment with the grain company involved an area which was separate and apart from the type of work he was doing when he was with Government.

Mr. BERGLAND. I think the general question about the so-called revolving door policy needs to be reviewed from time to time. I don't think we should single out an agency for special treatment.

This is a question which would be more appropriately addressed to the entire context of the Federal Government where we deal with all agencies and functions other than strictly agriculture.

Therefore, I am sympathetic but the amendment troubles me, Mr. Chairman.

Mr. JOHNSON. The gentleman made a valid point when you start considering the ramifications of this. Why limit it to grain? If it is a worthwhile amendment, why not involve companies selling farm machinery or trucks or airplanes or anything else where you have had this kind of problem and conflict but for which people have not been convicted because it is not a violation of law?

This is not well considered in my opinion because we are not considering the possibility of giving somebody a fair break. It is a lifetime sentence because they work for the USDA. There is no possibility of a person ever getting out and working in private industry in an area of their expertise or people from private industry coming to USDA for a limited period of time.

Mr. BERGLAND. My time has expired.

The CHAIRMAN. Mr. McHugh?

Mr. Krebs?

Mr. KREBS. I yield to Mr. McHugh.

Mr. McHUGH. I also sympathize with my good friend from Indiana. I think this is something we should consider.

While I recognize this may be a matter of general concern, I am not overly concerned about our dealing with it in this particular case. I therefore think it would be appropriate to consider this amendment if we believe it would be beneficial in this particular case.

However, I do have a reservation about making this type of employment a crime.

As I understand the usual situation in private industry, it is not uncommon for an employer to require, as a condition of employment, that an employee agree not to work in a competing industry for a limited period of time after employment terminates.

However, this is not generally a criminal matter. Therefore, it may be more appropriate to deal with this situation as a civil matter rather than a criminal one. In other words, we could make an employee of the USDA who leaves employment subject to injunctive action rather than a criminal penalty.

I would ask counsel in this respect whether there is any precedent in a similar situation for making subsequent employment a criminal matter as opposed to a civil matter.

Mr. BOR. The prohibitions against employment by former Government employees that is now contained in the code are all part of the criminal provisions of the code. At least to my knowledge there is no precedent which would make it a matter of, say, civil remedies such as injunctive relief or a matter for civil penalties.

Mr. McHUGH. In the case you mentioned previously, that is, where someone who has represented the Government is prohibited by law from representing a private interest before the Government agency by which he had been employed—is that covered by the Criminal Code?

Mr. BOR. Yes. That is section 207, title 18. The consequence is that a person who violates those provisions is subject to a fine of not more than \$10,000 or imprisonment for not more than 2 years.

Mr. McHUGH. I can only say in passing, then, Mr. Chairman, that I am somewhat concerned by this—not its intent, because I think it is a valid intent, but by the fact that mere employment would result in up to 2 years in jail and a \$10,000 fine.

I would be much more comfortable if this were made the subject of civil action rather than one of criminal action. I suppose it raises the question again as to whether or not we have really thought it through sufficiently.

I am sympathetic with the purpose of the amendment, but I would be hesitant to adopt it without our having thought it through more.

I yield back the balance of my time.

Mr. WEAVER. Mr. Chairman?

The CHAIRMAN. I will recognize somebody on the minority side if there is request for time.

If not, Mr. Weaver is recognized.

Mr. WEAVER. Mr. Bor, why did not the statute which you described to Mr. Bergland earlier apply to Mr. Palmby?

Mr. BOR. Excuse me?

Mr. WEAVER. Why did not the statute which you described to Mr. Bergland earlier apply to Mr. Palmby?

Mr. BOR. Mr. Weaver, I am not altogether sure of the answer, but I think the reason is that when Mr. Palmby's employment started with the Continental Grain Co., the work he was doing for Continental Grain Co., was not in a capacity that was similar to the work that he was handling when he left the Department of Agriculture. I don't have sufficient familiarity with the background of this to be able to answer definitively.

Mr. WEAVER. I found the statute rather vague, the statute which you read. I could not pin it down. I was trying to apply it in practice.

Is it possible that somebody in a position, such as Mr. Palmby, in a high position in the Department of Agriculture, who just simply went to work for a company in the same kind of business, could that statute possibly apply to him or would he have to actively work on a specific matter with the corporation that he had worked with when with the Government, specific rather than general?

Mr. BOR. Mr. Weaver, the answer you gave us is the answer to the issue; that is, the prohibition now in the code applies to a case of a person handling work in private employment which is the same type of work he was handling when in Government employment. It does not apply to a person who severs his Government employment and then goes to work for a firm handling a different type of work.

For example, you could have a person in the Department who goes to work for a grain merchandising firm and he would be having responsibilities with a grain merchandising firm not related in any way to the functions he had when he was with the Department of Agriculture.

That type of situation is not barred in any way by the current provisions of the law.

Mr. FITHIAN. If the gentleman would yield—what 207 states, in extension of Mr. Bor's remarks, is that the person cannot go from a Government agency into a private business and then represent that private business before that Government agency.

There is nothing at all which keeps a person from going from the Food and Drug Administration, who has written the regulations for FDA, out into the food industry and sitting there and working the day he leaves the Government as long as he personally does not come back before FDA and represents that corporation before FDA as I interpret the law.

He could go out there and counsel with a junior lawyer and send the junior lawyer in here and beat the regulations, if you will. It only precludes his representing that agency before the agency in which he sat in this policymaking matter, and then only for a period of 1 year.

The CHAIRMAN. Is there further comment by counsel? I don't know whether there is any substantial case law with reference to the statute which you cited.

In view of Mr. Sebelius' and Mr. Fithian's dialog I would wonder whether you have any opinions as to whether someone in an appointing authority in an international company and dealing with international grain would be subject to prosecution as an accessory if they knowingly and willfully employ a person prohibited under the terms of this amendment.

I suppose the specific reaches of the amendment do not cover the employer, but the question is whether the employment itself is prohibited in a criminal nature if the employer willfully and knowingly advances compensation, knowing that same act is prohibited by criminal statute as an accessory.

Mr. HOGAN. I would have an opinion. I would say yes. I think more particularly if an agent or a corporation official had knowledge of a violation of this and did not bring it to the attention of the authorities he would be charged with a misprision of a felony. It raises serious questions in that regard.

The CHAIRMAN. The principal requirements of the criminal statute are that it be specific in its prohibitions and that it make clear to those persons who might be otherwise involved in violations what the prohibited acts include.

I am not clear myself as to how far your amendment is intended to reach, but its language states "functions involving grain inspection or supervision of inspection or weighing of grain."

Assistant Secretaries of the Department are not normally involved, at least in any direct sense, in grain inspection, supervision of inspection, or the weighing of grain. So this provision would not seem to me to include the level of the policymakers. It would apply, however, to

all those having an ministerial or clerical responsibilities in the grain division or the warehouse division.

I agree with those who maintain that this is an important public policy question.

One of my concerns is that perhaps this issue could be better addressed in the broader context of applying to all USDA employees or all Government agencies rather than in the more limited framework of one division of the USDA or one act.

I know the gentleman feels we should start somewhere. However, if this were to become law only the USDA would be singled out as being prohibited from engaging in certain classes of private employment. Nobody else would.

As I said, it seems to me that this affects not only the policymakers, those most often criticized for going into private employment, but also the more ministerial, clerical and administrative personnel.

Mr. FITHIAN. If the chairman would yield.

The CHAIRMAN. Yes.

Mr. FITHIAN. I am fully sympathetic to the argument offered by Mr. Bergland, the chairman, and others, that we ought to address the problem on the broadest possible scale.

As a historian I can tell you that 10 years ago Congressmen wrung their hands and said they ought to do something about this.

Twenty years ago they wrung their hands and said something ought to be done about it. It goes 30 years, 40 years, 50 years. Meanwhile the public interest goes on being violated.

The CHAIRMAN. Does the gentleman have specific evidence concerning people in the grain inspection division or warehouse division who have, in fact, taken positions with international grain firms within 3 years after leaving the Government?

I have no idea how widespread this particular problem is.

Mr. FITHIAN. You raise a very good question as to whether it extends to the policymakers.

As you know, of course, it is very difficult to get records on previous employees unless they have been of sufficient note to have somehow been identified in the public media.

I have a list of 10 major employees in the Department of Agriculture, in addition to Mr. Palmby, who moved from those levels, either Assistant Secretary or equivalent, back and forth to the major grain corporations, and I could list them for you and the specific exchanges which took place.

Those are part of the public record.

The CHAIRMAN. Do you know whether any of those individuals were directly involved in the inspection, supervision of inspection, or weighing of grain?

Mr. FITHIAN. As the chairman well knows, we are just now trying to extend the Federal inspector concept.

The CHAIRMAN. The gentleman must remember that the Department is already involved in grain inspection in a supervisory and administrative capacity and that the Warehouse Act does include some weighing provisions.

Perhaps we should look at the number of employees of private and State inspection agencies who have experienced such a transfer of personnel.

I think I have an idea of some of the names the gentleman has on his list since they have been discussed before. However, they were people of fairly high rank in the Department of Agriculture who were not involved in these activities. I don't understand how the gentleman's amendment would reach them.

Mr. BEDELL. If the gentleman would yield.

Mr. FITHIAN. It is the chairman's time.

Mr. BEDELL. Mr. Chairman?

The CHAIRMAN. Mr. Bedell?

Mr. BEDELL. I would like to announce for the benefit of the group that we have a large number of farmers from northwest Iowa here from my farm convention. I want you to see we not only gave you a snowstorm but we also give you the sirens and everything else to welcome you here.

Many of them have come in since we started.

The CHAIRMAN. We also welcome all of the visitors from Iowa, and we are delighted to have you here.

Mr. HOGAN. I think you have the possible litigation consequences of this, as Mr. Bor has indicated.

I would assume that you also have the practical consequences of that potential litigation. No. 1, whether this is so broad in sweep as to deny employment for 3 years, whether that would result in litigation.

Then the secondary question is, if you get past that one, whether that is reasonable in scope. If you can do it for 3 years, can you do it for 10, 15, or for 2 or 1?

Then the practical consequences of that, assuming that you get over those questions, what effect does that have on recruitment of employees in a particular area?

Here it is limited to the grain inspection area. However, what effect does it then have on the recruitment if it were applied across the board in other Federal agencies. That is a practical consequence that I think members may want to consider and that is indirectly related to possible litigation.

The CHAIRMAN. I see my time has just about expired.

Mr. Moore?

Mr. MOORE. I move the previous question.

The CHAIRMAN. Without objection, the previous question is ordered and occurs on the Bedell amendment to the Fithian amendment.

The Bedell amendment would provide that the above provisions will apply only to employees of the Department of Agriculture employed subsequent to the enactment of the act.

Is that correct, counsel?

Mr. BEDELL. Yes.

Mr. BOR. Yes.

The CHAIRMAN. All those in favor of the Bedell amendment to the amendment signify by raising your right hands.

The CLERK. Fourteen.

The CHAIRMAN. Those opposed?

The CLERK. One.

The CHAIRMAN: There being 14 ayes and 1 nay, the amendment to the amendment is agreed to.

Without objection the vote will now occur on the Fithian amendment as amended.

All those in favor of the Fithian amendment will raise their right hands.

The CLERK. Four.

The CHAIRMAN. Those opposed?

The CLERK. Thirteen.

The CHAIRMAN. There being 4 ayes and 13 nays, the amendment is not agreed to.

Mr. Moore?

Mr. MOORE. I have a substitute I would like to offer at the appropriate time.

The CHAIRMAN. We have other matters which counsel and the Chair would like to bring to the attention of the committee. Some of these are newly suggested by the Department of Agriculture while others are needed for clarification.

The Chair recognizes counsel, Mr. Bor.

Mr. BOR. The first thing I would like to mention to the committee members involves matters brought to our attention by the Department of Agriculture in regard to the weighing amendment.

There is a proposed amendment which is being circulated.

This relates to the provision that requires Federal supervision of weighing at export elevators at export locations. There are a couple of matters which the Department has suggested should be clarified.

First is the desirability of making it clear as to what grain needs to be weighed. The Fithian amendment requires supervision of the weighing process. It apparently is also desirable to clarify that all the grain that is received or shipped from these export locations would have to be weighed, with an escape clause which would allow the Secretary to excuse from the necessity of weighing grain those cases which are unusual and which may come up on an occasional basis.

However, whatever grain is required to be weighed, then all that grain would have to be weighed under the supervision of Federal employees.

The second matter that comes up is to define a little more closely what elevators at export locations are caught by this provision.

The Department has pointed out that in certain places, particularly at the Great Lakes ports, there are some elevators which receive grain and do not ever ship it for export. The grain might be used at a local brewery or elsewhere in the community for domestic purposes.

The suggestion was that it may not be desirable to require the weighing and supervision of weighing to occur with respect to that kind of grain.

What this proposed amendment does, then, is to make the supervision of weighing apply to export elevators at export port locations. An export elevator is defined as any elevator from which grain is shipped from the United States to a place outside the United States. An elevator would be considered an export elevator even though a very small portion of the grain received there would be shipped abroad.

Therefore, the only elevators that would be excused from the supervision of weighing requirements would be those which would be used entirely, 100 percent, for domestic shipments of grain.

The third matter that is covered by this proposal relates to the shipments of U.S. grain, from Canadian ports.

There are several elevators in the upper reaches of the St. Lawrence River where grain is transshipped from the United States. This amend-

ment would provide that the supervision of weighing would apply at the export elevators in Canadian ports at such time as the Secretary is able to reach agreement with the Canadian Government authorities which would allow for the supervision and weighing. This recognizes the fact that in Canada it would take approval of the Canadian Government before Federal control of the weighing process could be undertaken with respect to the export shipments of U.S. grain.

The CHAIRMAN. Would this section, as amended, then be amended or modified by other sections of the Fithian amendment which permit the Secretary to delegate to State agencies supervision of the weighing of grain?

Mr. BOR. Yes. This does not touch the balance of the Fithian amendment. It amends just the first sentence of the amendment by Mr. Fithian which would require that the Federal Government supervise the weighing at export locations.

After the sentence amended by this proposal there appears the provision which would allow the Secretary to delegate authority to State agencies to undertake the supervision.

The CHAIRMAN. This may be a minor point, but wouldn't it be better to provide in the section that the Secretary is authorized to implement any agreement reached with the government of Canada?

The amendment seems to give the Secretary a questionable constitutional mandate to enter into foreign relations with a foreign government. Not only is this an area which is traditionally the responsibility of the Department of State but it might raise some question among members of the International Relations Committee.

Mr. BOR. That is a valid——

The CHAIRMAN. The Secretary is authorized to enter into an agreement with the government of Canada.

Mr. BOR. That would be fine, Mr. Chairman. There are other statutes where the Secretary has been given authority to enter into agreements. The plant pest and Mediterranean fruitfly bill is such a bill.

The CHAIRMAN. This would not violate the Logan Act or any other provision of law.

I don't want to change the language without good reason to do so.

Mr. BERGLAND. As a matter of fact, there is at least one elevator company operating out of the Port of Duluth-Superior, which also owns elevator facilities in other ports at the Great Lakes. They export grain abroad and sometimes transfer grain from one elevator to another.

When they transfer grain within the company, as a rule, I am told they don't weigh it but calculate the displacement of the conveyance, the ship, and determine the tonnage for the purpose of paying the freight between the two points.

Would this amendment require them to weigh even though it is an internal within-family kind of transfer?

Mr. BOR. To begin with, this provision gives the Secretary authority to excuse from the necessity of weighing certain unusual cases.

Mr. BERGLAND. In that case, for example, they would be exempted presumably.

Mr. BOR. If the Secretary found it desirable.

The elevator to which you refer, if it is an elevator which ships grain only to another elevator in the United States and never ships grain

overseas, would not be caught by this provision because it would not be considered an export port elevator.

Mr. BERGLAND. That satisfies me, Mr. Chairman. I think it is a good amendment.

Mr. BALDUS. Perhaps the Secretary's representative would be interested in this.

Mr. Chairman, in the recommendations from the Bunge Corp., the president said he was interested in seeing all export ports become licensed under the Warehouse Act.

I am sure one of the reasons for that was that you then set up an accountability system so that when it comes in it has to go some place. It has to be out.

It seems to me that embezzling grain is the same as embezzling money. If it comes in, it ought to go out some place and it should not go out twice, and there should be an accountability system.

Would this then allow the Department to examine records, let's say, because you have complete supervision of weighing, allow records to see whether there really is a reconciliation of the amount of grain that comes in and the amount of grain that went out?

They should really be the same. Would this provision allow you that kind of supervision?

Mr. BOR. Mr. Baldus, in another part of the Fithian amendment there is a provision which gives the Secretary authority to require recordkeeping of various firms with respect to grain which has been weighed. I think there is elsewhere in the bill a provision which gives the Secretary access to the records being kept by these firms.

Mr. BALDUS. I am not interested in seeing that requirements are set up that they be regular, but when there is a question of regularity it seems to me it should be clear the Department has not only the ability to do it but probably has a responsibility to do it.

Would that be the understanding of the Department of the combination of the two factors?

Is that a response in the affirmative?

Mr. BOR. I understand it is.

Mr. BALDUS. Would you say so, then?

Mr. JOHN GILMER. I am with the Agricultural Marketing Service. I worked with the U.S. Warehouse Act. It would be my understanding that we would keep a perpetual inventory, everything coming in and everything going out, so you can reconcile records at any time.

This is the thought we have been giving this and this is the way we would like to operate.

Mr. BALDUS. That is most valuable and useful understanding. It would be helpful in restoring confidence in a great number of areas.

I yield the balance of my time.

Mr. BEDELL. I have a question of counsel and perhaps the Department.

The last paragraph under definition applies not only to weighing but also applies to inspection, does it not?

Mr. BOR. We do not use the term "export port elevator" in the inspection provisions of the act. The only place where this would appear is in the weighing provisions.

Mr. BEDELL. So this applies only to the Fithian amendment with regard to weighing?

Mr. BOR. That is right.

The CHAIRMAN. Is there further discussion?

Mr. BERGLAND. Is the amendment offered?

The CHAIRMAN. No, it has not yet been.

Mr. BERGLAND. I move the amendment be adopted.

The CHAIRMAN. The gentleman from Minnesota, Mr. Bergland, moves adoption of the amendment.

Without objection the vote will occur at this time on the amendment as offered by Mr. Bergland.

All those in favor of the amendment signify by saying aye; those opposed nay.

The ayes have it, and the amendment is agreed to.

Will counsel proceed?

Mr. BOR. In the committee print there is a provision now on page 11 which authorizes the Secretary to hire without regard to civil service requirements as official inspection personnel people who are currently performing these functions in private industry.

It would appear desirable to give the Secretary the same flexibility in hiring personnel to undertake the weighing functions which are going to be performed by the Department.

The CHAIRMAN. Members will recall that the committee print authorizes the employment of personnel necessary to effect the inspection activities required under the act without regard to civil service provisions.

The proposal here is to extend that provision to the weighing personnel if the Department sees the need.

The gentleman from Kansas, Mr. Sebelius, moves adoption of the amendment.

All those in favor signify by saying aye; opposed?

The ayes have it. The amendment is agreed to.

Mr. BALDUS. Mr. Chairman?

The CHAIRMAN. Mr. Baldus.

Mr. BALDUS. In regard to that provision, and I don't want to make any amendment, but perhaps the committee report might want to show a concern on the part of the committee that when private or agency people are displaced, and they are good employees, and there is a record of good employment, and they come into Federal service, that that Federal service, grade, and benefit should be considered in setting what their former rank and benefits were.

I don't know whether that is properly said but I am sure the committee would be able to do that. I think committee counsel can do that and I am sure that committee members would want to see some kind of equality arrived at, not simply just offering them a job at the lowest level of the pay scale and thereby fulfill the obligation.

The CHAIRMAN. I think it was generally the intention of the committee that to the extent hiring was required it most certainly will be if this act becomes law that consideration be given, as it almost would have to be.

I simply question the wisdom of putting too many restraints on the terms and conditions of Federal employment. There may be only so many openings so that someone may be willing to start in an available job at a lower grade.

Mr. BALDUS. It would be my recommendation there be some general language in the committee report.

The CHAIRMAN. We are all interested in fairness and equity.

Mr. BALDUS. Yes.

Mr. THONE. I would like to join with Mr. Baldus on this.

Mr. Bergland, Mr. Baldus, and a couple of us had a meeting with Congresswoman Lindy Boggs from the New Orleans area. I know Mr. Moore is also very concerned on this.

Many of these employees are faithful, loyal and honest employees, and we were not trying, Mr. Moore, to paint everybody with a broad brush here saying they were crooks and corrupt. It is just that the overall system is pretty rotten, Mr. Moore.

Seriously, for example, there are some of these employees, Mr. Chairman, who have worked very loyally and faithfully with the fine New Orleans Board of Trade for many, many years.

We are putting them out of current business with this legislation. Somehow or other, if their pension rights or their other employment rights can be protected by wordage in the report or otherwise, I would sure urge it be done. Mrs. Boggs feels very strongly on this, and she is right.

The CHAIRMAN. There is the related problem of being fair and equitable to those presently involved in Federal employment who might be harmed if we create a special category of employees who would take all the supervisory or other positions.

If we are going to exempt these individuals from the hiring provisions of the Civil Service Act, the Committee on Post Office and Civil Service will want to be reassured that we are not intending to unnecessarily violate the standards of Federal advancement and civil service protection by giving special privileges to those coming into employment from other sources.

That might be a problem. Perhaps we can discuss this with the other committee when we get to the point of writing the report.

I understand the gentleman's concern and sympathize.

I want to be sure we give some direction to the Department without being unfair to those presently involved.

Mr. BALDUS. Consideration would be the proper word.

The CHAIRMAN. Mr. Krebs?

Mr. KREBS. You took the words out of my mouth. I have just been through this process in connection with a decision by the State of California to get out of the meat inspection business. The very point you raised came up during discussions of that matter.

I think we might be infringing on the jurisdiction of the Civil Service and Post Office Committee here. I wonder if language in this Report would actually be an exercise in futility.

We should be very careful in the type of language we use.

The CHAIRMAN. Mr. Moore?

Mr. MOORE. I would like to amplify this point. This is indeed a problem not just from the point of view of what you are doing with the civil service question. I appreciate the concern of the members of the committee who met with Mrs. Boggs on this matter. There is a real problem here regarding individuals who are going to be put out of work.

I cannot foresee how you will treat these individuals as they are being treated now. Many have benefits the Federal Government does not provide. There is the question of transfer of seniority status and whether the civil service system will allow a direct transfer of years of service for seniority purposes.

I have received a communication from the grain inspector's union. Many of them like union representation and they will not have that under USDA. Many of them are concerned about the fact they don't want to go into Federal employment because they will lose certain benefits.

The interesting point then is where will you get your grain inspectors. There are not 2,000 or 3,000 grain inspectors unemployed around the country looking for Federal employment. All are presently employed. It is a question of whether you will accept these or train new ones.

I submit you will have a real problem under this bill because if you simply say that the New Orleans Board of Trade and others are out of this business, you will have delays in the grain inspection, and you will have a shortage of grain inspectors if these people don't work for USDA. That will back up the export of grain and ultimately grain will be exported without inspection, weighing, and so on.

You have a real problem here. I appreciate the language in the report, but that will not solve the problem.

The CHAIRMAN. Counsel will proceed with the next matter.

Mr. BOR. Another issue relates to conforming other sections of the bill to take account of the weighing functions that will be engaged in now by the Department.

I am thinking, for example, about the finding section of the bill where there needs to be reference made to the fact that the bill now covers weighing.

Also in the criminal sections of the bill there needs to be a provision that would include the personnel involved in the supervision of weighing in the provisions relating to bribery and intimidation. Our committee print covers these personnel, official inspection personnel, who are the subject of bribery or intimidation.

The CHAIRMAN. I may be wrong, but I don't think there is much controversy with respect to either of these two changes. The Chair will put a unanimous consent request.

Is there objection to amending the bill to include reference to the need for weighing supervision?

Hearing none, that will be ordered; and the staff will be authorized to so amend the finding section.

Is there any objection to conforming the criminal section of the bill prohibiting bribery by extending the Federal statute to cover supervisory and weighing personnel?

Without objection that will be amended.

Is there objection to extending the protection of freedom from interference as it applies to inspection personnel to those involved in weighing as well?

Without objection, then, that is passed.

Mr. BOR. Mr. Chairman, I have heard discussion of the desirability of having the Secretary report to the two committees, the Senate and House Committees on Agriculture, after a year has elapsed subsequent to the enactment of this bill with regard to the progress being made in implementing provisions of this bill.

The CHAIRMAN. At this point, the committee print makes the legislation effective 30 days after the enactment of the act and further provides that 2 years after it comes into effect the Secretary shall have met all the requirements of the act.

Inasmuch as we already have a provision requiring that the Secretary report to us the results of certain studies within a year, it might be useful to require that he also report on his progress in implementing the act at that time.

Would anyone like to move that?

Mr. BALDUS. I so move.

The CHAIRMAN. Mr. McHugh also moves adoption of the provision requiring the Secretary to report 1 year after the enactment of the act.

All those in favor of the amendment signify by saying aye; those opposed no.

The ayes have it, and the amendment is agreed to.

Counsel?

Mr. BOR. Mr. Chairman, there may be a few other technical provisions of law which need to be conformed and need to take account of action of the committee on weighing.

I wonder whether the staff might be given the authority——

The CHAIRMAN. The Chair was going to ask general permission for the staff to be allowed to conform the draft with respect to purely clerical or technical adjustments which do not touch on questions of substance.

I will put that unanimous consent request to you at this point.

Is there any objection? This would include such things as adjusting subsection numbers and perfecting or conforming language to carry out the intent of the committee.

Without objection the staff will be so authorized.

Are there other amendments?

Mr. BOR. These are the only suggestions we have at this time, sir.

The CHAIRMAN. Mr. Moore?

Mr. MOORE. I have a substitute. There will not be much debate on it. I will yield a few minutes of the allotted time.

[The substitute to the committee print offered by Mr. Moore follows:]

SUBSTITUTE TO THE COMMITTEE PRINT OFFERED BY MR. MOORE

Amend the Committee Print by striking all language after the enacting clause and substituting therefore all of the language of the Committee Print as amended by the Committee except the following:

(a) Page 3, line 16, strike the comma and insert a period in lieu thereof and add immediately thereafter the following:

"If the Secretary determines that a State Agency, other governmental organization, board of trade, chamber of commerce or grain exchange is qualified to perform official inspection in accordance with the criteria of subsection (f) (1) (A) of this section, the Secretary may, in his discretion, delegate authority to such Agency or entities to perform all or specified functions involved in official inspection (other than appeal inspection) at export port locations subject to such rules, regulations, instructions or oversight as he may prescribe. Any such delegation may be revoked by the Secretary, at his discretion, pursuant to the provisions of subsection (g) (4) of this section."

(b) Insert at the end of subsection (a), section 8, the following:

"If the Secretary determines that a State Agency, other governmental organization, board of trade, chamber of commerce, or grain exchange is qualified to perform supervision of weighing in accordance with subsection (c) of this section, the Secretary may, in his discretion, delegate authority to the State Agency or other entity to perform such supervision at export port locations subject to such rules, regulations and instructions as he may prescribe. Any such delegation may be revoked by the Secretary, at his discretion, pursuant to the provisions of subsection (g) (4) of section 7 of this Act, as amended."

Mr. MOORE. My substitute basically adopts everything the committee has done with the exception of who will be allowed to do the inspecting and who will be allowed to do the supervising of weighing.

You will recall that I offered specific amendments on this point. Both of them failed. I now offer a substitute which essentially addresses my earlier inquiries.

The substitute allows the existing hearing procedure to occur when the delegation of authority is revoked by the Secretary of Agriculture.

In the committee print there is no due process or hearing provision. The Secretary simply revokes it and that is the end of it.

I have put back into the committee print the provisions of existing law which deal with the agency being entitled to a hearing before a license is revoked or its delegation of authority is revoked.

Those are the only two things the substitute provision provides. In every other manner it adopted all amendments, including those we adopted this morning, in the committee print.

In summary, I simply would like to say my arguments in favor of this substitute would likewise justify opposition to passage of the bill or committee print if the substitute is not adopted.

What we are dealing with here is simply the fact that the GAO, U.S. Attorney Gallinghouse, all the other evidence turned up by USDA has proven two things—we have dishonest people who got away with crimes. Many have been caught and will pay the price. Second, we had a system, a poorly administered system.

I am not sure the system is rotten to the core. I am not sure that has been proven. It has been proven that the USDA fell down on the job. I cannot see it any other way.

I submit that we can save the existing system without necessarily wrecking it or going to a Federal system.

By what has been done in the committee print and what has been done by the USDA in tightening up its powers, proper corrective action has been taken. Turning to federalization is not the answer. We have done that too often in Government and we have not come out with better solutions. When you look at the meat inspection problems we are having, the food stamp problems we are having, problems of the post office, you cannot argue that a Federal employee will be any more efficient and any more honest just because he or she receives a Federal paycheck.

What we have done in the bill in the form of criminal penalties and greater supervision will bring about the changes we need and want. You don't have to go the one step further which the committee print does. I don't think we can legislate honesty.

All we can do is provide a system that will catch and severely punish those who do not abide by the law. This we have done.

Unless corrective action is taken, this will also result in greater cost to the taxpayer and consumer. That was a problem we discussed yesterday in connection with Mr. Thone's amendment.

In conclusion, we have overreacted and gone one step too far. We can withdraw for a moment and still produce a meaningful piece of legislation which hopefully will solve the problems confronting us.

I don't think we have any assurance that taking the additional step of placing these employees on the Federal payroll will solve our problem.

As discussed a moment ago in the colloquy concerning the employees presently working in this business, they will be hurt. There are some 3,000 of them. How many will go into the Federal system? How many will quit? Nobody knows at this point. I don't think it will be possible to treat them exactly as they are being treated now.

Therefore I simply say that considering all these points my substitute does retain everything that you have done which I think is constructive. It simply reopens the idea of letting these nonprofit organizations, such as chambers of commerce and boards of trade, supervise weighing and do inspecting. It does not allow private companies to do it in the substitute I have submitted. I don't think that should be done.

I simply submit that what the committee has done, if adopted through my substitute, is less radical surgery that hopefully will produce the same cure.

I ask for its passage. I will not ask for a rollcall vote but I ask for a division.

Mr. KREBS. If the gentleman will permit a question. Did I mishear you when you made reference to an appeal procedure or hearing?

Mr. MOORE. As the substitute has been drawn, it changes the language originally inserted by the chairman in his amendment to the committee print, which states that the Secretary of Agriculture may delegate to certain State agencies the right to inspect and supervise, but that delegation can be withdrawn at any time without notice and without a hearing.

I am simply inserting in here the right to have the hearing and have the notice, as is provided in the existing law.

Mr. KREBS. Which of your substitutes covers that? Is it "B?"

Mr. MOORE. The last sentence of "A" and the last sentence of "B."

Mr. KREBS. I see it.

The CHAIRMAN. As I understand it, the effect is to make the section's revocation authority subject to the requirements of the Administrative Procedures Act. Is that correct?

Mr. MOORE. That is what is intended.

Mr. HOGAN. What the Congressman wanted was to incorporate those features in his amendment.

Mr. MELCHER. I think that the amendment offered by Mr. Moore would be a step backward which this committee certainly will not take. However, I think we have already stepped too far back in this bill in relation to inspection of grain sold abroad.

I would hope that, given the opportunity on the floor, that those of us who feel, on behalf of our grain producers, that we should insist that this legislation require Federal inspection on foreign grain sales. I would hope we can be successful in modifying the bill on the floor to do just that if we fail here in the committee by a narrow margin for we are now in the position of authorizing State agencies to conduct the inspection and the weighing at terminals.

I feel it is necessary to repeat what some of us have said here before—to regain the confidence of American grain being properly graded and properly weighed and honestly represented in foreign sales, it is tremendously important to leave all Federal inspection at the ports. That is the most important feature of this bill. We will

have Federal weighing of grain and all the supervision that goes with it as a matter of course.

I trust the committee will turn down the amendment by Mr. Moore which goes a step backward; one more step backward.

Hopefully those of us who feel foreign sales of grain should be completely Federal inspected and weighed will have the opportunity to make that effort on the floor. I hope we are successful at that time.

I yield back the balance of my time.

Mr. THONE. I move the previous question, Mr. Chairman.

The CHAIRMAN. The question is on the adoption of the substitute.

All those in favor of the substitute will raise their right hands.

The CLERK. Three.

The CHAIRMAN. All of those opposed?

The CLERK. Twelve.

The CHAIRMAN. There being 3 ayes and 12 nays, the substitute is not agreed to.

If there are no other amendments or substitutes to be offered, the Chair intends to ask the staff to prepare a clean copy of the committee print in bill form. The Chair further intends to introduce this clean copy at an early opportunity, perhaps next Monday, and to then schedule a meeting for the purpose of considering any final motions to report out such a bill.

The Chair would like to advise members that he would welcome any members of the committee as cosponsors, although I understand there are others who will offer other proposals on the floor.

Mr. Harkin, who is unavoidably absent today, talked to me earlier about offering a substitute bill, even though he does not currently plan to do so in the committee, he wanted the record to show that he reserves his right to offer amendments or substitutes on the floor.

If those members who wish to have their names added to the clean copy of the committee print would notify committee counsel by noon on Monday, their names will be added.

Mr. BERGLAND. The committee will be convened sometime later next week, then, to report out a clean bill presumably.

Following that there would be an appropriate period of time in which the report will be prepared, 3 days?

The CHAIRMAN. The rules specify that members have three legislative days for the purpose of submitting any minority or additional dissenting views.

Mr. BERGLAND. Some of us would probably like to insert some additional views on one question dealing with the matter of Federal preemption at the export locations.

The CHAIRMAN. At the time any bill is ordered reported by this committee all members' rights will be protected for 3 legislative days, unless by unanimous consent the committee determines otherwise. Thus, I assume members will have 3 days in this instance.

It seems to me that the timing will be determined largely by how soon the printing office returns the bill number and when we have an opportunity to distribute it to members.

I would anticipate that might be later next week.

Following any action of the committee, of course, the Chair would advise the rules committee and seek an appropriate rule.

If there is no other business to come before the committee, the Chair wishes to thank all the members. You have been extremely dutiful during a long and difficult legislative effort. We will stand adjourned to meet at 10 o'clock tomorrow for consideration of the proposed budget statement.

This is an important meeting, and I would hope all members will have an opportunity to attend.

The committee will stand adjourned to meet at 10 a.m. tomorrow.
[Whereupon, at 11:45 a.m., the meeting was adjourned.]

U.S. GRAIN STANDARDS ACT OF 1976

WEDNESDAY, MARCH 17, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met at 9:40 a.m., pursuant to call, in room 1301 Longworth House Office Building. Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Jones of North Carolina, Jones of Tennessee, Melcher, Bergland, Rose, Breckinridge, Nolan, Weaver, Baldus, Krebs, Hightower, Bedell, McHugh, Fithian, Jenrette, D'Amours, Wampler, Sebelius, Findley, Thone, Johnson, Madigan, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; Gene Moos, staff analyst; Steve Pringle, Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee meets today for the purpose of considering H.R. 12572, which was introduced yesterday. We have just received copies from the Government Printing Office.

[The bill, H.R. 12572 follows:]

94TH CONGRESS
2D SESSION

H. R. 12572

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1976

Mr. FOLEY (for himself, Mr. WAMPLER, Mr. SMITH of Iowa, Mr. BALDUS, Mr. BEDELL, Mr. BERGLAND, Mr. BRECKINRIDGE, Mr. BROWN of California, Mr. ENGLISH, Mr. FITHIAN, Mr. GRASSLEY, Mr. HAGEDORN, Mrs. HECKLER of Massachusetts, Mr. HIGHTOWER, Mr. JEFFORDS, Mr. JENRETTE, Mr. JONES of Tennessee, Mr. KREBS, Mr. NOLAN, Mr. THONE, Mr. VIGORITO, and Mr. WEAVER) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the United States Grain Standards Act to improve the grain inspection and weighing system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "United States Grain
4 Standards Act of 1976".

5 SEC. 2. Section 2 of said Act (7 U.S.C. 74) is amended
6 by striking in the second sentence the word "and" before "to
7 provide" and by adding in such sentence immediately before
8 the semicolon " , and to regulate the weighing of grain in the
9 manner hereinafter provided".

2

1 SEC. 3. Section 3 of said Act (7 U.S.C. 75) is amended
2 by changing subsection (i) defining the term “official in-
3 spection”, subsection (j) defining the term “official inspec-
4 tion personnel”, and subsection (m) defining the term
5 “official inspection agency”, and adding new subsections
6 (v), (w), and (x) to read, respectively, as follows:

7 “(i) The term ‘official inspection’ means the determina-
8 tion (by original inspection, and when requested, reinspec-
9 tion and appeal inspection) and the certification, by official
10 inspection personnel, of the kind, class, quality, or condition
11 of grain, under standards provided for in this Act, or the
12 condition of vessels and other carriers or containers for trans-
13 porting or storing grain insofar as it may affect the quality
14 or condition of such grain; or, upon request of the interested
15 person applying for inspection, the quantity of sacks of grain,
16 or other facts relating to grain under other criteria approved
17 by the Secretary under this Act (the term ‘officially in-
18 spected’ shall be construed accordingly).

19 “(j) The term ‘official inspection personnel’ means per-
20 sons licensed or otherwise authorized by the Secretary pur-
21 suant to section 8 of this Act to perform all or specified
22 functions involved in official inspection, or in supervision of
23 official inspection.”.

24 “(m) The term ‘official inspection agency’ means any
25 State or local governmental agency, or any person, desig-

§

1 nated by the Secretary pursuant to subsection (f) of section
2 7 of this Act for the conduct of official inspection (other than
3 appeal inspection).”.

4 “(v) The term ‘export port elevator’ means any ele-
5 vator, warehouse, or other storage or handling facility at
6 an export port location in the United States from which grain
7 is shipped from the United States to any place outside thereof.

8 “(w) The term ‘export port location’ means a com-
9 monly recognized port of export in the United States or
10 Canada, as determined by the Secretary of Agriculture, from
11 which grain produced in the United States is shipped to any
12 place outside the United States.

13 “(x) The term ‘supervision of weighing’ means the
14 supervision of the weighing process and of the certification
15 of the weight of grain, and the physical inspection of the
16 premises at which the weighing is performed to assure that
17 all the grain intended to be weighed has been weighed and
18 discharged into the elevator or conveyance represented on
19 the weight certificate or other document.”.

20 SEC. 4. Section 7 of said Act (7 U.S.C. 79) is amended
21 by changing subsections (e) and (f) and adding new sub-
22 sections (g), (h), and (i) to read, respectively, as follows:

23 “(e) The Secretary shall cause official inspection to be
24 performed at export port locations, for all grain required or
25 authorized to be inspected by this Act, by authorized em-

1 ployees of the Department of Agriculture or other persons
2 under contract with the Department as provided in section 8.
3 If the Secretary determines that a State agency is qualified
4 to perform official inspection in accordance with the criteria
5 of subsection (f) (1) (A) of this section, the Secretary
6 may, in his discretion, delegate authority to the State agency
7 to perform all or specified functions involved in official
8 inspection (other than appeal inspection) at export port
9 locations subject to such rules, regulations, instructions, and
10 oversight as he may prescribe, and any such official inspec-
11 tion shall continue to be the direct responsibility of the
12 Secretary. Any such delegation may be revoked by the
13 Secretary, at his discretion, at any time upon notice to the
14 State agency without opportunity for a hearing. The Secre-
15 tary may provide that grain loaded at an interior point in
16 the United States into a rail car, barge, or other container
17 as the final carrier in which it is to be transported from the
18 United States shall be inspected in the manner provided in
19 this subsection or subsection (f), as the Secretary determines
20 will best meet the objectives of this Act.

21 “(f) (1) With respect to official inspections other than
22 at export port locations, the Secretary is authorized, upon
23 application by any State or local governmental agency, or
24 any person, to designate such agency or person as an official
25 inspection agency for the conduct of all or specified func-

5

1 tions involved in official inspection (other than appeal inspec-
2 tion) at locations at which the Secretary determines official
3 inspection is needed, if:

4 “(A) the agency or person shows to the satisfaction
5 of the Secretary that such agency or person:

6 “(i) has adequate facilities and qualified per-
7 sonnel for the performance of such official inspection
8 functions;

9 “(ii) will conduct such training and provide
10 such supervision of its personnel as are necessary
11 to assure that they will provide official inspection in
12 accordance with this Act and the regulations and
13 instructions thereunder;

14 “(iii) will not charge official inspection fees
15 that are discriminatory or unreasonable;

16 “(iv) and any related entities do not have a
17 conflict of interest prohibited by section 11 of this
18 Act;

19 “(v) will maintain complete and accurate
20 records of its organization, staffing, official inspec-
21 tions, and fiscal operations, and such other records
22 as the Secretary may require by regulation;

23 “(vi) will comply with all provisions of this
24 Act and the regulations and instructions thereunder;

25 “(vii) meets other criteria established in regu-

1 lations issued under this Act relating to official in-
2 spection agencies or the performance of official
3 inspection; and

4 “(B) the Secretary determines that the applicant
5 is better able than any other applicant to provide official
6 inspection service.

7 “(2) Not more than one official inspection agency for
8 carrying out the provisions of this Act shall be operative at
9 one time for any geographic area as determined by the
10 Secretary to effectuate the objectives stated in section 2 of
11 this Act, but this subsection shall not be applicable to pre-
12 vent any inspection agency from operating in any area in
13 which it was operative on August 15, 1968. No State or
14 local governmental agency or person shall provide any of-
15 ficial inspection for purposes of this Act except pursuant to
16 an unsuspended and unrevoked delegation of authority or
17 designation by the Secretary, as provided in this section, or
18 as provided in section 8 (a).

19 “(g) (1) Designations of official inspection agencies
20 shall terminate at such time as specified by the Secretary
21 but not later than triennially and may be renewed in accord-
22 ance with the criteria and procedure prescribed in subsections
23 (e) and (f).

24 “(2) A designation of an official inspection agency
25 may be amended at any time upon application by the official

1 inspection agency if the Secretary determines that the
2 amendment will be consistent with the provisions and ob-
3 jectives of this Act; and a designation will be canceled upon
4 request by the official inspection agency with ninety days
5 written notice to the Secretary. A fee as prescribed by reg-
6 ulations of the Secretary shall be paid by the official inspec-
7 tion agency to the Secretary for each such amendment, to
8 cover the costs incurred by the Department in connection
9 therewith, and it shall be deposited in the fund provided for
10 in subsection (i) of this section.

11 “(3) The Secretary may revoke a designation of an
12 official inspection agency whenever, after opportunity for
13 hearing is afforded to the agency, the Secretary determines
14 that the agency has failed to meet one or more of the criteria
15 specified in subsection (f) of this section or the regulations
16 under this Act for the performance of official inspection
17 functions, or otherwise has not complied with any provision
18 of this Act or any regulation prescribed or instruction issued
19 to such agency under this Act, or has been convicted of any
20 violation of other Federal law involving the handling or of-
21 ficial inspection of grain: *Provided*, That the Secretary may,
22 without first affording the official inspection agency an op-
23 portunity for a hearing, suspend any designation pending
24 final determination of the proceeding whenever the Secre-
25 tary has reason to believe there is cause for revocation of

1 the designation and considers such action to be in the best
2 interest of the official inspection system under this Act. The
3 Secretary shall afford any such agency an opportunity for a
4 hearing within thirty days after temporarily suspending such
5 designation.

6 “(h) If the Secretary determines that official inspection
7 by an official inspection agency designated under subsection
8 (f) is not available on a regular basis at any location
9 (other than at an export port location) where the Secre-
10 tary determines such inspection is needed to effectuate the
11 objectives stated in section 2 of this Act, and that no official
12 inspection agency within reasonable proximity to such loca-
13 tion is willing to provide and has or can acquire adequate
14 personnel and facilities for providing such service on an
15 interim basis, official inspection shall be provided by au-
16 thorized employees of the Department, and other persons
17 licensed by the Secretary to perform official inspection func-
18 tions, as provided in section 8 of this Act, until such time as
19 the service can be provided on a regular basis by an official
20 inspection agency.

21 “(i) (1) The Secretary shall, under such regulations as
22 he may prescribe, charge and collect reasonable inspection
23 fees to cover the estimated cost to the Department of Agricul-
24 ture incident to the performance of official inspection, except
25 when the inspection is performed by an official inspection

1 agency or a State agency under a delegation of authority.
2 The fees authorized by this subsection shall, as nearly as
3 practicable and after taking into consideration any proceeds
4 from the sale of samples, cover the costs of the Department
5 of Agriculture incident to its performance of official inspec-
6 tion services in the United States and on United States grain
7 in Canadian ports, including 75 per centum of the estimated
8 total supervisory and administrative costs related to such
9 official inspection of grain. Such fees, and the proceeds from
10 the sale of samples obtained for purposes of official inspection
11 which become the property of the United States, shall be
12 deposited in miscellaneous receipts of the United States
13 Treasury.

14 “(2) Each designated official inspection agency and each
15 State agency to which authority has been delegated under
16 subsection (e) shall pay to the Secretary fees in such amount
17 as the Secretary determines fair and reasonable and as will
18 cover the costs incurred by the Department relating to direct
19 supervision of official inspection agency personnel, and direct
20 supervision by Department personnel (outside of the Wash-
21 ington office) of its field office personnel. Such fees shall not
22 exceed 75 per centum of the estimated total Federal costs
23 related to the official inspection of grain by such agencies,
24 except costs incurred under paragraph (4) of this subsection
25 and sections 9, 10, and 14 of this Act. The fees shall be

1 payable after the services are performed at such times as
2 specified by the Secretary and shall be deposited in miscel-
3 laneous receipts of the United States Treasury. Failure to
4 pay the fee within thirty days after it is due shall result in
5 automatic termination of the delegation or designation, which
6 shall be reinstated upon payment, within such period as
7 specified by the Secretary, of the fee currently due plus in-
8 terest and any further expenses incurred by the Department
9 because of such termination.”.

10 SEC. 5. A new section 7A is added to said Act to read
11 as follows:

12 “WEIGHING

13 “SEC. 7A. Notwithstanding any other provision of law—

14 “(a) Except as the Secretary may otherwise provide
15 in emergency or other circumstances which would not impair
16 the objectives of this Act, all grain received at or shipped
17 from export port elevators at export port locations in the
18 United States shall be weighed. The Secretary shall cause
19 supervision of the weighing of all such grain to be performed
20 by authorized employees of the Department of Agriculture.
21 If the Secretary determines, in accordance with the criteria
22 of subsection (c) of this section, that a State agency is quali-
23 fied to perform supervision of weighing, the Secretary may,
24 in his discretion, delegate authority to the State agency to
25 perform such supervision at export port locations subject

1 to such rules, regulations, instructions, and oversight as he
2 may prescribe, and any such supervision of weighing shall
3 continue to be the direct responsibility of the Secretary. Any
4 such delegation may be revoked by the Secretary, at his
5 discretion, at any time upon notice to the State agency with-
6 out opportunity for a hearing. The Secretary is authorized
7 to implement an agreement entered into with the Govern-
8 ment of Canada to provide for United States supervision of
9 weighing of United States grain received at or shipped from
10 export port elevators at Canadian ports and the requirements
11 of this subsection shall apply to United States grain so re-
12 ceived and shipped after the entering into of such an
13 agreement.

14 “(b) No weighing supervision shall be provided for
15 the purposes of this Act at any export port elevator until
16 such time as the operator of the elevator has demonstrated
17 to the satisfaction of the Secretary that he (1) has and
18 will maintain, in good order, suitable grain-handling equip-
19 ment and accurate scales for all weighing of grain at the
20 elevator, and will cause such scales to be tested properly
21 by competent agencies at suitable intervals, in accordance
22 with the regulations of the Secretary; (2) will employ only
23 competent persons with a reputation for honesty and integ-
24 rity to operate the scales and to handle grain in connection
25 with weighing of the grain, in accordance with this Act;

1 (3) when weighing is to be done by employees of the
2 elevator, will require its employees to operate the scales in
3 accordance with the regulations of the Secretary and to
4 require that each lot of grain for delivery from any railroad
5 car, truck, barge, vessel, or other means of conveyance at
6 the elevator is entirely removed from such means of convey-
7 ance and delivered to the scale without avoidable waste or
8 loss, and each lot of grain weighed at the elevator for ship-
9 ment from the elevator is entirely delivered to the means
10 of conveyance for which intended, and without avoidable
11 waste or loss, in accordance with the regulations of the Sec-
12 retary; (4) will provide all assistance needed by the Secre-
13 tary for making any inspection or examination and carrying
14 out other functions at the elevator pursuant to this Act, and
15 (5) will comply with all other requirements of this Act and
16 the regulations hereunder.

17 “(c) The Secretary may provide that the actual weigh-
18 ing and certification of weights and the inspection and test-
19 ing of scales (or any one or more of such functions) at any
20 location described in subsection (a) shall be performed
21 either by authorized employees of the Department of Agri-
22 culture or by State or local agencies or other persons desig-
23 nated by the Secretary if he determines that it will effectuate
24 the objectives of this Act. In such event, the Secretary may
25 designate a State or local agency or person to perform any

1 such functions if the agency or person shows to the satis-
2 faction of the Secretary that (1) it has adequate facilities
3 and qualified personnel for the performance of such func-
4 tions, (2) will conduct such training and provide such su-
5 pervision of its personnel as are necessary to assure that they
6 will provide the service in accordance with this Act and the
7 regulations and instructions thereunder, (3) will not charge
8 fees that are discriminatory or unreasonable, (4) does not
9 have a conflict of interest prohibited by section 11 of this
10 Act, (5) will maintain complete and accurate records of its
11 organization, staffing, and operations and such other records
12 as the Secretary may require by regulation, (6) will comply
13 with all provisions of the Act and the regulations and in-
14 structions thereunder, and (7) meets other criteria estab-
15 lished in regulations issued under this Act relating to the
16 performance of such functions. Designations made pursuant
17 to this subsection shall be subject to the same provisions as
18 designations for official inspection agencies under section
19 7 (g) .

20 “(d) The Secretary is authorized (1) to investigate
21 the weighing and the certification of the weight of grain
22 shipped in interstate or foreign commerce; (2) to require
23 by regulation the maintenance of complete and accurate
24 records of the weighing of such grain for such period of
25 time as the Secretary determines is necessary for the effec-

1 tive administration and enforcement of this Act; and (3)
2 to prescribe by regulation the standards, procedures, and con-
3 trols for accurate weighing and certification of weights of
4 grain including safeguards of equipment, and the calibration
5 and maintenance thereof, at locations specified in subsection
6 (a) of this section.

7 “(e) The Secretary shall conduct a study concerning
8 the supervision of weighing, the weighing and certification
9 of weights of grain, and the inspection and testing of scales
10 used in the weighing of grain at both export port elevators
11 and other than export port elevators. The Secretary shall
12 report the results of the study to the House Committee on
13 Agriculture and the Senate Committee on Agriculture and
14 Forestry not later than twelve months after the effective
15 date of this Act, together with any recommendations for
16 legislation that he determines necessary for strengthening
17 the adequacy and reliability of the system.

18 “(f) No State or local governmental agency or person
19 shall weigh or state in any document the weight of grain
20 determined at a location where weights are required to be
21 supervised or the weighing or inspection and testing of scales
22 is required to be performed as provided for in this section
23 except in accordance with the procedures prescribed pur-
24 suant to this section. No person shall use any scales which

1 have been disapproved by the Secretary or a State or local
2 government agency or person designated by the Secretary.

3 “(g) The provisions of this section shall not limit any
4 authority vested in the Secretary under the United States
5 Warehouse Act (39 Stat. 486, as amended, 7 U.S.C. 241
6 et seq.).

7 “(h) The representatives of the Secretary shall be af-
8 forded access to any elevator, warehouse, or other storage or
9 handling facility from which grain is delivered for shipment
10 in interstate or foreign commerce or to which grain is deliv-
11 ered from shipment in interstate or foreign commerce and all
12 facilities therein for weighing grain.

13 “(i) (1) The Secretary shall, under such regulations
14 as he may prescribe, charge and collect reasonable fees to
15 cover the estimated costs to the Department of Agriculture
16 incident to the performance of the functions provided for
17 under this section, except as otherwise provided in para-
18 graph (2) of this subsection. The fees authorized by this
19 paragraph shall, as nearly as practicable, cover the costs of
20 the Department of Agriculture incident to performance of
21 its functions related to weighing, including 75 per centum
22 of the estimated total supervisory and administrative costs
23 related to such services. Such fees shall be deposited in mis-
24 cellaneous receipts of the United States Treasury.

1 “(2) Each agency to which authority has been dele-
2 gated under this section and each agency or other person
3 which has been designated to perform functions related to
4 weighing under this section shall pay to the Secretary fees
5 in such amount as the Secretary determines fair and reason-
6 able and as will cover the costs incurred by the Department
7 relating to direct supervision of the agency personnel and
8 direct supervision by Department personnel (outside of the
9 Washington office) of its field office personnel incurred as
10 a result of the functions performed by such agencies, but
11 such fees shall not exceed 75 per centum of the estimated
12 total Federal costs related to the weighing functions of such
13 agencies, except costs incurred under sections 9, 10, and 14
14 of this Act. The fees shall be payable after the services are
15 performed at such times as specified by the Secretary and
16 shall be deposited in miscellaneous receipts to the United
17 States Treasury. Failure to pay the fee within thirty days
18 after it is due shall result in automatic termination of the
19 delegation of designation, which shall be reinstated upon
20 payment, within such period as specified by the Secretary,
21 of the fee currently due plus interest and any further
22 expenses incurred by the Department because of such
23 termination.”.

24 SEC. 6. Section 8 of said Act (7 U.S.C. 84) is

1 amended (a) by amending subsection (a) to read as fol-
2 lows:

3 “(a) The Secretary is authorized (1) to issue a license
4 to any individual upon presentation to him of satisfactory
5 evidence that such individual is competent, and is employed
6 by an official inspection agency, or a State agency delegated
7 authority under section 7(e), to perform all or specified
8 original inspection or reinspection functions involved in
9 official inspection of grain in the United States; (2) to
10 authorize any competent employee of the Department of
11 Agriculture to (i) perform all or specified original inspec-
12 tion, reinspection, or appeal inspection functions involved
13 in official inspection of grain in the United States, or of
14 United States grain in Canadian ports, and (ii) supervise
15 the official inspection of grain in the United States and of
16 United States grain in Canadian ports; and (3) to contract
17 with any person to perform specified sampling and labora-
18 tory testing and to license competent persons to perform
19 such functions pursuant to such contract. No person shall
20 perform any official inspection functions for purposes of this
21 Act unless such person holds an unsuspended and unre-
22 voked license or authorization from the Secretary under
23 this Act.”.

24 (b) By amending subsection (b) to insert “or by a

1 State agency under a delegation of authority pursuant to
2 section 7 (e) ” after “official inspection agency”.

3 (c) By amending subsection (d) and adding new sub-
4 sections (e) and (f) to read as follows:

5 “(d) Persons employed by an official inspection agency
6 (including persons employed by a State agency under a
7 delegation of authority pursuant to section 7 (e), persons
8 performing official inspection functions under contract with
9 the Department of Agriculture, and persons employed by a
10 State or local agency or other person conducting functions
11 relating to weighing under section 7A shall not, unless other-
12 wise employed by the Federal Government, be determined
13 to be employees of the Federal Government of the United
14 States: *Provided, however,* That such persons shall be con-
15 sidered in the performance of any official inspection functions
16 or any functions relating to weighing as prescribed by this
17 Act or by the rules and regulations of the Secretary, as
18 persons acting for or on behalf of the United States, for the
19 purpose of determining the application of section 201 of title
20 18, United States Code, to such persons and as employees
21 of the Department of Agriculture assigned to perform in-
22 spection functions for the purposes of sections 1114 and 111
23 of title 18 of the United States Code.

24 “(e) The Secretary of Agriculture may hire (without
25 regard to the provisions of title 5, United States Code, gov-

erning appointments in the competitive service) as official inspection personnel any individual who is licensed (on the date of enactment of this Act) to perform functions of official inspection under the United States Grain Standards Act and as personnel to perform supervisory weighing or weighing functions any individual who, on the date of enactment of this Act, was performing similar functions: *Provided*, That the Secretary of Agriculture determines that such individuals are of good moral character and are technically and professionally qualified for the duties to which they will be assigned.”.

SEC. 7. Section 9 of said Act (82 Stat. 765, 7 U.S.C. 85) is amended by adding a new sentence at the end thereof to read as follows: “The Secretary may summarily revoke any license whenever the licensee has been convicted of any offense prohibited by section 13 of this Act, or convicted of any offense proscribed by title 18, United States Code, with respect to performance of functions under this Act.”.

SEC. 8. Section 10 of said Act (7 U.S.C. 86) is amended—

(a) by changing the title to read “REFUSAL OF INSPECTION AND WEIGHING SERVICES AND CIVIL PENALTIES”;

(b) by amending subsection (a) to read as follows:

1 “(a) The Secretary may (for such period, or in-
2 definitely, as he deems necessary to effectuate the purposes
3 of this Act) refuse to provide official inspection or the serv-
4 ices related to weighing otherwise available under this Act
5 with respect to any grain offered for such services, or owned,
6 wholly or in part, by any person if he determines (1) that
7 the individual (or in case such person is a partnership, any
8 general partner; or in case such person is a corporation, any
9 officer, director, or holder or owner of more than 10 per
10 centum of the voting stock; or in case such person is an
11 unincorporated association or other business entity, any
12 officer or director thereof; or in case of any such business
13 entity any individual who is otherwise responsibly con-
14 nected with the business) has knowingly committed any
15 violation of section 13 of this Act or has been convicted of
16 any violation of other Federal law with respect to the
17 handling, weighing, or official inspection of grain, or that
18 official inspection or the services related to weighing has
19 been refused for any of the above-specified causes (for a
20 period which has not expired) to such person, or any other
21 person conducting a business with which the former was,
22 at the time such cause existed, or is responsibly connected;
23 and (2) that providing such service with respect to such
24 grain would be inimical to the integrity of the service.

1 (c) by amending subsection (c) and adding new
2 subsections (d) and (e) to read as follows:

3 “(c) In addition to, or in lieu of, penalties provided
4 under section 14 of this Act, or in addition to, or in lieu of
5 refusal of official inspection or services related to weighing
6 in accordance with this section, the Secretary may assess,
7 against any person who has knowingly committed any viola-
8 tion of section 13 of this Act or has been convicted of any
9 violation of other Federal law with respect to the handling,
10 weighing, or official inspection of grain a civil penalty not
11 to exceed \$50,000 for each such violation as the Secretary
12 determines is appropriate to effectuate the objectives stated
13 in section 2 of this Act.

14 “(d) Before official inspection or services related to
15 weighing is refused to any person or a civil penalty is
16 assessed against any person under this section, such person
17 shall be afforded opportunity for a hearing in accordance
18 with sections 554, 556, and 557 of title 5 United States
19 Code.

20 “(e) Moneys received in payment for such civil penal-
21 ties shall be deposited in the general fund of the United
22 States Treasury. Upon any failure to pay the penalties
23 assessed under this section, the Secretary may request the
24 Attorney General to institute a civil action to collect the

1 penalties in the appropriate court identified in subsection (h)
2 of section 17 of this Act for the jurisdiction in which the
3 respondent is found or resides or transacts business, and such
4 court shall have jurisdiction to hear and decide any such
5 action.”.

6 SEC. 9. Section 11 of said Act (7 U.S.C. 87) is amended
7 by designating the provisions thereof as subsection (a) and
8 adding new subsections (b) and (c) to read as follows:

9 “(b) (1) No official inspection agency or a State agency
10 delegated authority under section 7 (e), or any member,
11 director, officer, or employee thereof, and no business or
12 governmental entity related to any such agency, shall be
13 employed in or otherwise engaged in, or directly or indirectly
14 have any stock or other financial interest in, any business
15 involving the commercial transportation, storage, merchan-
16 dising, or other commercial handling of grain, or the use
17 of official inspection service (except that in the case of a
18 producer such use shall not be prohibited for grain in which
19 he does not have an interest); and no business or govern-
20 mental entity conducting any such business, or any member,
21 director, officer, or employee thereof, and no other business
22 or governmental entity related to any such entity, shall
23 operate or be employed by or directly or indirectly have
24 any stock or other financial interest in, any official inspection
25 agency or a State agency delegated inspection authority.

1 Further, no substantial stockholder in any incorporated offi-
2 cial inspection agency shall be employed in or otherwise
3 engaged in, or be a substantial stockholder in any corpora-
4 tion conducting, any such business, or directly or indirectly
5 have any other kind of financial interest in any such business;
6 and no substantial stockholder in any corporation conducting
7 such a business shall operate or be employed by or be a sub-
8 stantial stockholder in, or directly or indirectly have any
9 other kind of financial interest in, any official inspection
10 agency.

11 “(2) A substantial stockholder of a corporation shall be
12 any person holding 2 per centum or more, or one hundred
13 shares or more, of the voting stock of the corporation, which-
14 ever is the lesser interest. Any entity shall be considered to
15 be related to another entity if it owns or controls, or is owned
16 or controlled by, such other entity, or both entities are owned
17 or controlled by another entity.

18 “(3) Each State agency delegated supervision of weigh-
19 ing authority under section 7A and each State or local
20 agency or other person designated by the Secretary under
21 such section to perform services related to weighing shall be
22 subject to the provisions of subsection (b) of this section.
23 The term ‘official inspection agency’ as used in such subsec-
24 tion shall be deemed to refer to a State or local agency or
25 other person performing such services under a delegation or

1 designation from the Secretary, and the term 'use of official
2 inspection service' shall be deemed to refer to the use of the
3 services provided under such a delegation or designation.

4 “(4) If a State or local governmental agency is dele-
5 gated authority to perform official inspection or supervision
6 of weighing, or a State or local governmental agency is
7 designated as an official inspection agency or is designated
8 to perform weighing functions, the Secretary shall specify
9 the officials and other personnel thereof to which the conflict
10 of interest provisions of this subsection (b) apply.

11 “(5) Notwithstanding the foregoing provisions of this
12 subsection, the Secretary may delegate authority to a State
13 agency or designate a governmental agency, a board of trade,
14 chamber of commerce, or grain exchange to perform official
15 inspection or to perform services related to weighing, except
16 that for purposes of services related to weighing only, he
17 may also designate any other person, if he determines that
18 any conflict of interest which may exist between the agency
19 or person or any member, officer, employee, or stockholder
20 thereof and any business involving the transportation, storage,
21 merchandising, or other handling of grain or use of official
22 inspection or weighing service is not such as to jeopardize
23 the integrity or the effective or objective operation of the
24 functions performed by such agency.

25 “(c) The provisions of this section shall not prevent an

1 official inspection agency from engaging in the business of
2 weighing grain.”.

3 SEC. 10. (a) Section 12 of said Act (7 U.S.C. 87a)
4 is amended by inserting after the term “official inspection
5 agency” each time it appears in subsections (b) and (c),
6 the term “and every person licensed to perform any official
7 inspection function under this Act”.

8 (b) Section 12 of said Act is further amended by add-
9 ing the following new subsection (d), at the end thereof:

10 “(d) Every person who, at any time, has obtained or
11 obtains official inspection shall, within the five-year period
12 thereafter, maintain complete and accurate records of pur-
13 chases, sales, transportation, storage, treating, cleaning, dry-
14 ing, blending, and other processing, and official inspections
15 of grain. and permit any authorized representative of the
16 Secretary, at all reasonable times, to have access to, and to
17 copy, such records and to have access to any grain elevator,
18 warehouse, or other storage or handling facility used by such
19 person for handling of grain.”.

20 SEC. 11. Section 13 of said Act is amended:

21 (a) By inserting in subsection (a) (11) “7 (f) (2),
22 7A,” after “section 5, 6,”;

23 (b) By striking the word “or” at the end of subsec-
24 tion (a) (10), striking the period at the end of subsection

1 (a) and inserting a semicolon in lieu thereof and adding
2 new subsections (a) (12) and (a) (13) as follows:

3 “(12) knowingly engage in falsely stating or falsi-
4 fying the weight of any grain shipped in interstate or
5 foreign commerce, or

6 “(13) knowingly prevent or impede any buyer or
7 seller of grain or other person having a financial inter-
8 est in the grain, or the authorized agent of any such per-
9 son, from observing the loading of grain inspected un-
10 der this Act and the weighing, sampling and inspection
11 of such grain under conditions prescribed by the Secre-
12 tary.”; and

13 (c) By inserting in subsection (b) (2) the words “or
14 weighing” after the word “inspection”.

15 SEC. 12. Section 1114 of title 18 of the United States
16 Code, as amended, is hereby amended by (1) striking the
17 phrase “any employee of the Bureau of Animal Industry of
18 the Department of Agriculture,” and (2) inserting immedi-
19 ately after the phrase “or of the Department of Labor” the
20 words “or of the Department of Agriculture”.

21 SEC. 13. Section 14 of the United States Grain Stand-
22 ards Act (7 U.S.C. 87c) is amended to read as follows:

23 “CRIMINAL PENALTIES

24 “SEC. 14. (a) Any person who commits an offense
25 prohibited by section 13 (except an offense prohibited by

1 paragraphs (a) (7), (a) (8), and (b) (4) in which case
2 he shall be subject to the general penal statutes in title 18
3 of the United States Code relating to crimes and offenses
4 against the United States) shall be guilty of a misdemeanor
5 and shall, on conviction thereof, be subject to imprisonment
6 for not more than twelve months, or a fine of not more than
7 \$10,000, or both such imprisonment and fine; but, for each
8 subsequent offense subject to this subsection, such person
9 shall be subject to imprisonment for not more than five
10 years, or a fine of not more than \$20,000, or both such
11 imprisonment and fine.”.

12 “(b) Nothing in this Act shall be construed as requiring
13 the Secretary to report minor violations of this Act for
14 criminal prosecution when he believes that the public interest
15 will be adequately served by a suitable written notice of
16 warning, or to report any violation of this Act for prosecu-
17 tion when he believes that institution of a proceeding under
18 section 10 of this Act will obtain compliance with this Act
19 and he institutes such a proceeding.

20 “(c) Any officer or employee of the Department of
21 Agriculture assigned to perform weighing functions under
22 this Act shall be considered as an employee of the Depart-
23 ment of Agriculture assigned to perform inspection functions
24 for the purposes of sections 1114 and 111 of title 18.”

25 SEC. 14. Section 16 of said Act (7 U.S.C. 87e) is

1 amended to read as follows: "The Secretary is authorized to
2 conduct such investigations; hold such hearings; require
3 such reports from any official inspection agency, any State
4 agency delegated authority under section 7 (e), licensee, or
5 other person; require by regulation as a condition for official
6 inspection, among other things (a) that there be installed
7 specified sampling and monitoring equipment in grain eleva-
8 tors, (b) that approval of the Secretary be obtained as to
9 the condition of carriers and containers for transporting or
10 storing of grain, and (c) that persons having a financial
11 interest in the grain which is to be inspected (or their
12 agents) shall be afforded an opportunity to observe the
13 weighing, loading, and official inspection thereof, under
14 conditions prescribed by the Secretary. The Secretary is
15 further authorized to prescribe such other rules, regulations,
16 and instructions as he deems necessary to effectuate the
17 purposes or provisions of this Act. Whether any certificate,
18 other form, representation, designation, or other description
19 is false, incorrect, or misleading within the meaning of this
20 Act shall be determined by tests made in accordance with
21 such procedures as the Secretary may adopt to effectuate
22 the objectives of this Act, if the relevant facts are determi-
23 nable by such tests. Proceedings under section 9 of this Act
24 for refusal to renew, or for suspension or revocation of, a
25 license, shall not, unless requested by the respondent, be

1 subject to the administrative procedure provisions in sections
2 554, 556, and 557 of title 5, United States Code.”.

3 SEC. 15. Section 17 of said Act (7 U.S.C. 87f)
4 is amended by deleting from subsection (e) the term
5 “section 14” and substituting in lieu thereof the term “sub-
6 section (a) of section 14”; and by changing subsection (g)
7 to read as follows:

8 “(g) Any present or former officer or employee of the
9 Department of Agriculture or of any State agency delegated
10 authority under this Act or any official inspection agency,
11 or any agency or person designated to perform services
12 related to weighing under section 7A, or any present or
13 former licensee, who shall make public any information ob-
14 tained under this Act except pursuant to authority from the
15 Secretary or a court order or otherwise in connection with
16 law enforcement proceedings by the Federal Government,
17 as pursuant to a request from a committee of the Congress,
18 shall be guilty of a misdemeanor, and upon conviction thereof
19 be subject to the penalties set forth in subsection (a) of section
20 14 of this Act. Nothing contained herein shall be construed
21 as prohibiting such person from divulging information which
22 he reasonably believes involves conduct prohibited under
23 this Act or under title 18 of the United States Code.”.

24 SEC. 16. Section 19 of said Act (7 U.S.C. 87h) is
25 amended to read as follows:

1 "APPROPRIATIONS

2 "SEC. 19. There are hereby authorized to be appro-
3 priated such sums as are necessary for monitoring in foreign
4 ports grain officially inspected under this Act; improvement
5 of official standards for grain, improvement of inspection
6 procedures and equipment, and other activities authorized by
7 section 4 of this Act; development and issuance of rules,
8 regulations, and instructions; and other Federal costs in-
9 curred under this Act."

10 STUDY OF GRAIN STANDARDS AMENDMENT

11 SEC. 17. In order to assure that producers, handlers, and
12 transporters of grain are encouraged and rewarded for the
13 production, maintenance, and delivery of the quality of grain
14 needed to meet the end-use requirements of domestic and
15 foreign buyers, the Secretary is hereby authorized and
16 directed to conduct an investigation and make a study re-
17 garding the adequacy of the current grain standards estab-
18 lished under the United States Grain Standards Act. To
19 determine the items of concern to buyers, both foreign and
20 domestic, and how sellers in the United States might best
21 satisfy those needs, the Secretary may seek the advice of
22 and may employ the services of representatives of the grain
23 industry, land-grant colleges, and other members of the
24 public (without regard to the provisions of title 5, United

1 States Code, governing appointments in the competitive
2 service). On the basis of the results of such study, the Secre-
3 tary, in accordance with section 4 of the United States
4 Grain Standards Act, shall make such changes in the grain
5 standards as he determines necessary and appropriate, and,
6 not later than one year after the enactment of this Act, sub-
7 mit a report to the Congress setting forth the findings of
8 such study and action taken by him as a result of the study.

9 REPORTS OF COMPLAINTS

10 SEC. 18. The United States Grain Standards Act is
11 amended by inserting after section 19 the following new
12 section:

13 "REPORTING REQUIREMENTS

14 "SEC. 20. On February 1 of each year, the Secretary
15 shall submit to the House Committee on Agriculture and the
16 Senate Committee on Agriculture and Forestry a summary
17 of all complaints received by the Department of Agriculture
18 from foreign purchasers and prospective purchasers of grain
19 and other foreign purchasers interested in the trade of grain:
20 *Provided*, That the summary shall not include a complaint
21 unless reasonable cause exists to believe that the complaint
22 is valid, as determined by the Secretary."

23 SEC. 19. The Secretary shall submit a report to the
24 House Committee on Agriculture and the Senate Commit-

tee on Agriculture and Forestry one year after the effective date of this Act setting forth the actions taken by him in implementing the provisions of this Act.

EFFECTIVE DATE

SEC. 20. This Act shall become effective on the thirtieth day after enactment hereof; and thereafter no State agency shall provide official inspection at an export port location or supervision of weighing at an export port elevator at an export port location without a delegation of authority and no agency or person shall provide official inspection service in any other area without a designation under the United States Grain Standards Act, as amended hereby, except that any agency or person then providing such service in any area, who, pays fees when due, in the same manner as prescribed in section 7 or 7A of the United States Grain Standards Act, as amended hereby, may continue to operate in that area without a delegation or a designation but shall be subject to all provisions of the United States Grain Standards Act and regulations thereunder in effect immediately prior to the effective date hereof, until whichever of the following events occurs first:

- (1) a delegation or designation of such agency or person to perform such services is granted or denied by the Secretary pursuant to said Act, as amended hereby;
- or

1 (2) such agency, or two or more members or em-
2 ployees thereof, have been or are convicted of a viola-
3 tion of any provision of the United States Grain Stand-
4 ards Act in effect immediately prior to the effective
5 date hereof; or convicted of any offense proscribed by
6 any other Federal law involving the handling or official
7 inspection of grain; or

8 (3) the expiration of a period as determined by the
9 Secretary of not more than two years following the
10 effective date hereof.

The CHAIRMAN. Has the staff had an opportunity to briefly review the bill?

Mr. BOR. Mr. Chairman, we have gotten only part way through it. It is being done right now. The job is being completed now.

The CHAIRMAN. The bill, except for some possible printing errors, which may or may not show up, is the agreed upon result of our markup of the committee print.

Are there any amendments to the bill? Is there a substitute to be offered for the bill? Is there any discussion?

Mr. BERGLAND. Mr. Chairman, I want the members of the committee to know that a number of us plan to prepare an amendment for introduction on the floor dealing with the question of preemption of State inspection authority at export points only.

We do not intend to bring the matter up here today. The issue was decided in committee by a close vote so we shall not bring it up today.

Mr. POAGE. In the same vein, I expect to vote against this bill on the floor. I have yet to be shown, and nobody has attempted to show me just what benefit it would be to the United States in the way of grading and classifying this grain.

I therefore want it understood that I am opposed to the bill.

The CHAIRMAN. Thank you, Mr. Poage.

Mr. FITHIAN. Mr. Chairman. I am just quickly running through the bill.

Would counsel, or perhaps the Chair, comment on or explain a little more specifically what the study of the inspection and weighing standards, how much guidelines do we really give the Department in this? What kind of a study will they be doing and what kind of report will they be bringing back to us, et cetera?

The CHAIRMAN. Will counsel respond?

Mr. BOR. There is a study which has been requested with respect to the weighing system. That appears on page 14 of the bill.

The CHAIRMAN. Yes, it begins on line 7 of page 14 and reads as follows:

The Secretary shall conduct a study concerning the supervision of weighing, the weighing and certification of weights of grain, and the inspection and testing of scales used in the weighing of grain at both export port elevators and other than export port elevators. The Secretary shall report the results of the study to the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry not later than 12 months after the effective date of this act, together with any recommendations for legislation that he determines necessary for strengthening the adequacy and reliability of the system.

Mr. FINDLEY. Mr. Chairman, on that study, just to make some legislative history, I assume that the language of that section does not require a study of every elevator, port and so forth, in order to complete the study. It could be so read. I am sure that is not the intent of the committee.

The CHAIRMAN. No, to my knowledge the committee does not intend that the Secretary or his agents visit every elevator at every port location. It is not an inspection, as Mr. Poage says, but a study aimed at answering questions of policy.

And while this study is in progress, we will be consulting with the Department.

Mr. THONE. There is also a study required on the grain studies in line with the Bedell amendment.

Mr. BOR. That appears on page 30 of the bill.

The CHAIRMAN. Is there a motion to report the bill?

Mr. WAMPLER. I so move, Mr. Chairman.

The CHAIRMAN. The gentleman from Virginia moves that the bill, H.R. 12572, be reported to the House with recommendations that it do pass.

Mr. DE LA GARZA. I second it.

The CHAIRMAN. The gentleman from Texas moves the previous question on the motion.

All those in favor of the motion will so signify.

Mr. MOORE. Mr. Chairman, I ask for a recorded vote.

The CHAIRMAN. All those in favor will respond "aye" when their names are called, those opposed "nay."

The clerk will call the roll.

[The rollcall follows:]

Ayes: Representatives de la Garza, Vigorito (by proxy), Jones of North Carolina, Jones of Tennessee, Melcher, Mathis (by proxy), Bergland, Brown (by proxy), Bowen (by proxy), Breckinridge, Richmond (by proxy), Nolan, Weaver, Baldus, Krebs, Hightower, Bedell (by proxy), McHugh, Fithian, D'Amours, Thornton (by proxy), Wampler, Sebelius, Findley, Thone, Madigan, Heckler (by proxy), Grassley, Hagedorn, Foley, Rose, Jenrette.

Nays: Representatives Poage, Harkin (by proxy), Johnson, Kelly, Moore.

The CHAIRMAN. The clerk will report the result of the rollcall.

The CLERK. 32 ayes and 5 nays.

The CHAIRMAN. There being 32 ayes and 5 nays, the motion is agreed to. The Chair notes that a quorum is present.

Mr. BOR. Mr. Chairman, I wonder whether the staff might have authority to correct any purely clerical errors that might have been made?

The CHAIRMAN. Without objection, the staff will be authorized to make needed clerical and grammatical changes in the bill for the purpose of reflecting the position of the committee.

Hearing no objection it is so ordered.

The clerk will report the number of members present and voting.

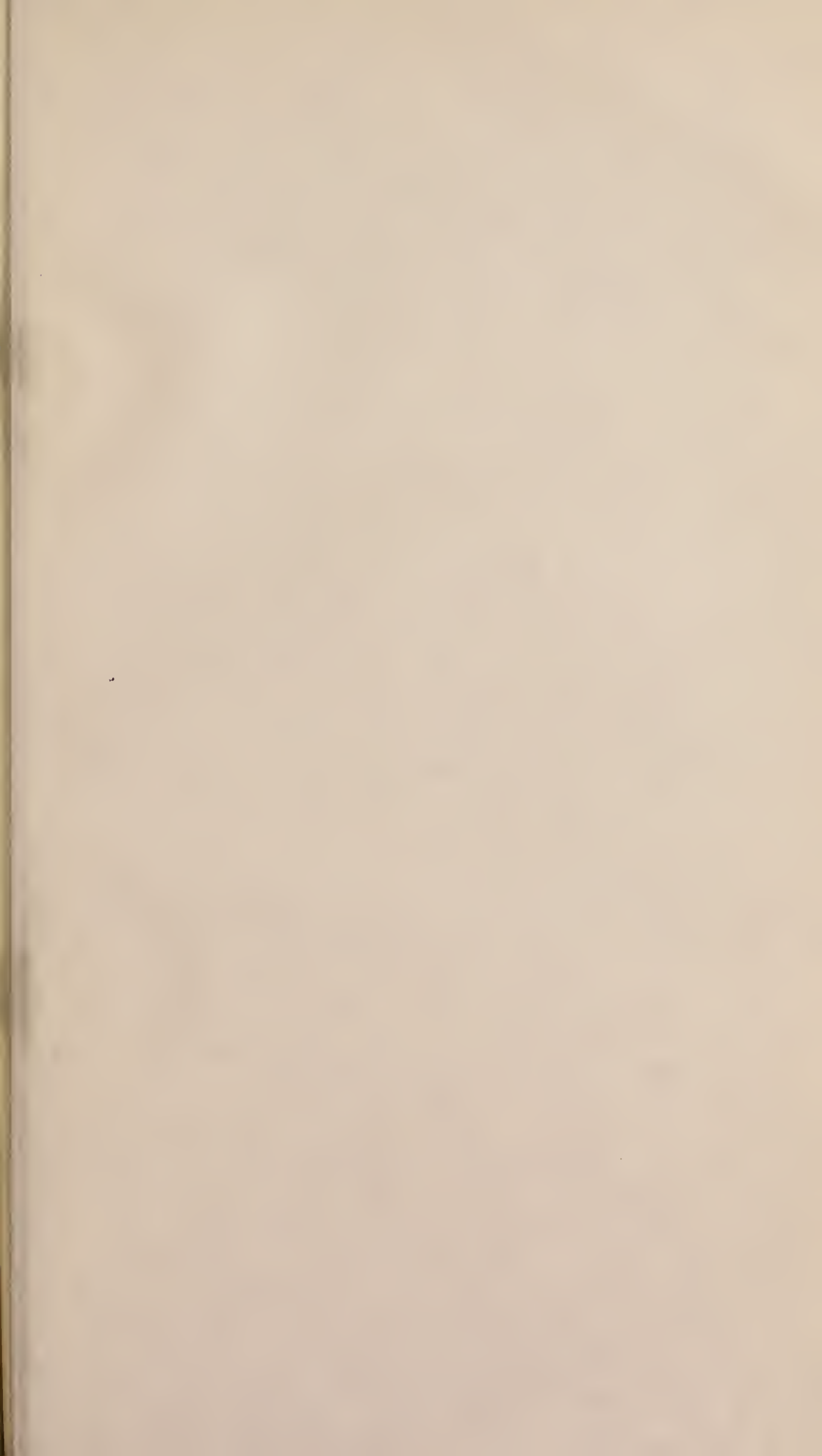
The CLERK. Nine members had proxies, so 26 members were present and voting.

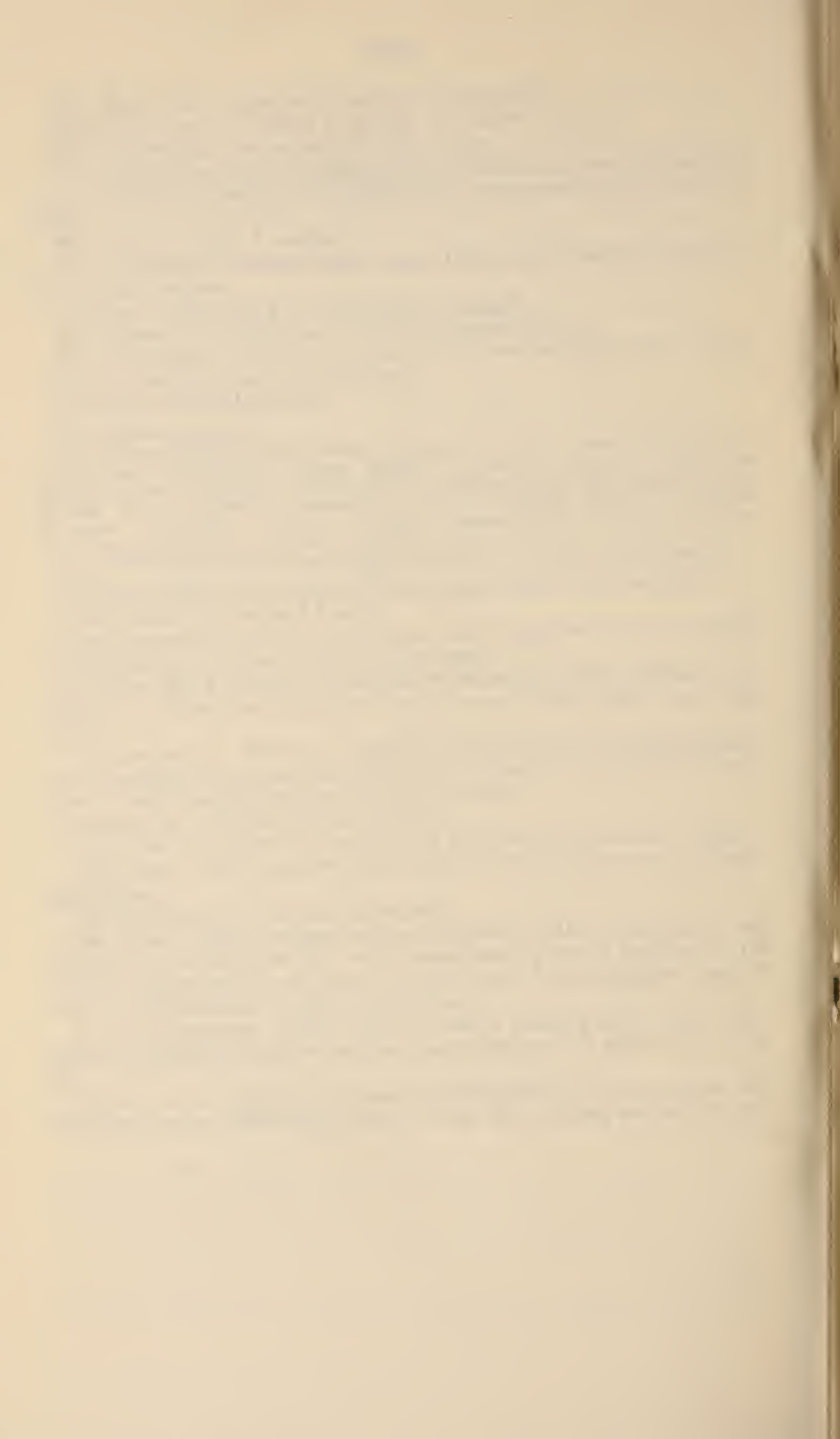
The CHAIRMAN. A quorum is present.

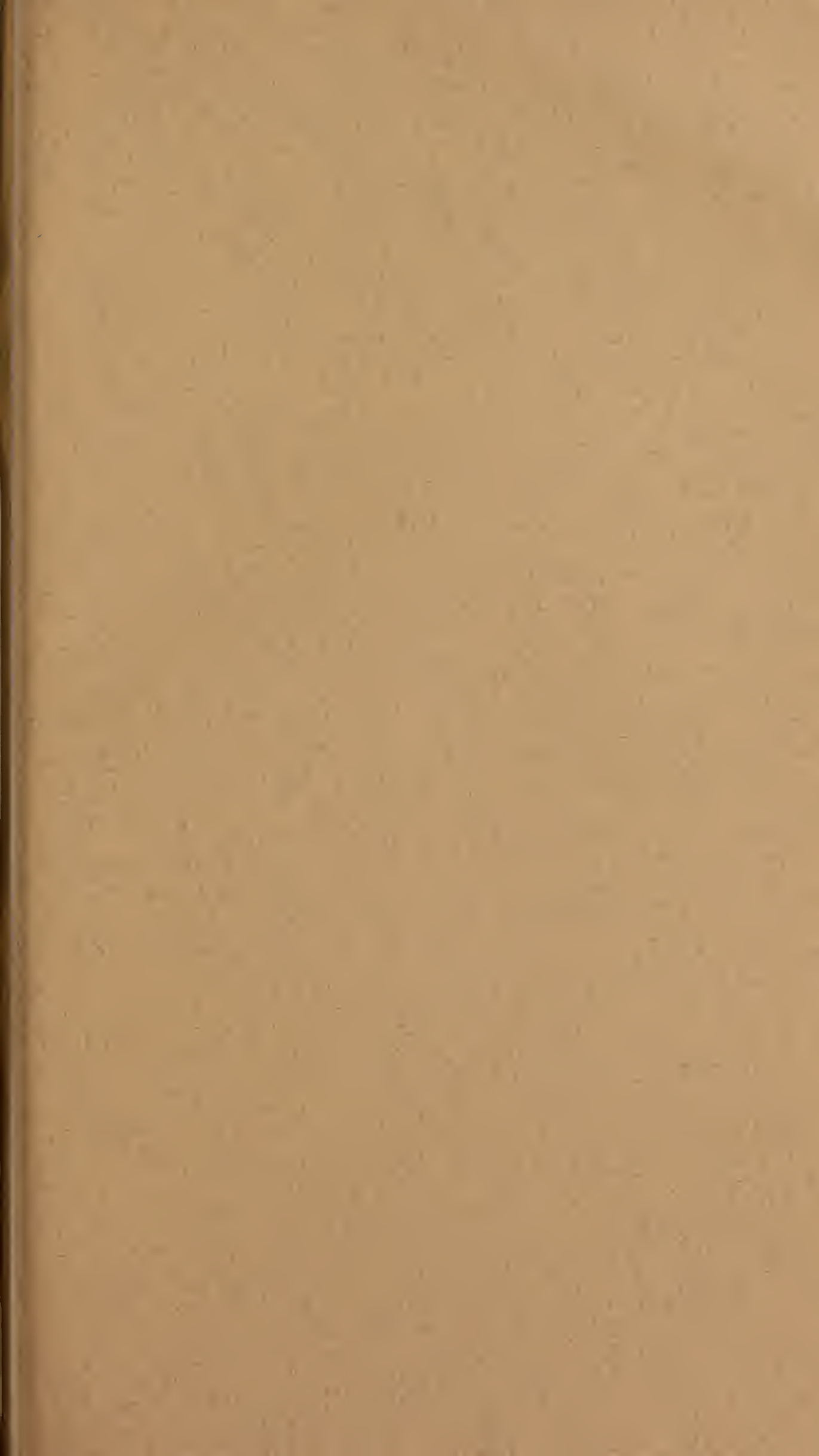
The Chair wishes to thank all the members for their attendance and diligence in working on this very complicated piece of legislation. Of course, under the rules all members will have three legislative days to submit supplemental or dissenting views.

It is the intention of the Chair to seek a hearing before the Committee on Rules as soon as possible and to request an open rule on the bill.

If there is no further business, the Committee on Agriculture will stand adjourned. Whereupon, at 9:53 a.m. the meeting was adjourned.







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